LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

Item No. 2
Mtg. Date September 6, 2016
Dept. Development Services Department

Item Title: **Public Hearing to Consider an Appeal AA1-600-0002 of the Development Services Director Determination Regarding the Denial of a Request to Install Nine Bedrooms (Room Addition and Remodel) to an Existing Five Bedroom House and to Permit the Operation of a Boardinghouse Located at 2545 Crestline Drive in the Residential Low/Medium Zone.**

Staff Contact: David De Vries, Development Services Director
Miranda Evans, Assistant Planner

Recommendation:

1. Conduct the public hearing; and
2. Either adopt a Resolution (**Attachment B**) upholding the Development Services Director determination to deny the installation of nine bedrooms and the operation of a boardinghouse or adopt a Resolution (**Attachment C**) reversing the decision of the Development Services Director conditionally approving the nine bedroom room addition remodel and the operation of a boardinghouse at 2545 Crestline Drive in the Residential Low/Medium Zone.

Item Summary:

On June 23, 2016, after reviewing a building permit request to add nine bedrooms to an existing single-family residential home and after obtaining evidence which showed the rooms of the addition would be rented separately with meals provided on-site, the Development Services Director denied the request stating that the land use is a boardinghouse and not compatible with the General Plan Land Use Designation (Low/Medium Density Residential) or Zoning District (Residential Low/Medium). The appellant, Mr. Tim Hutchison, filed an Appeal Application and request for public hearing stating the proposal is not a boardinghouse and referenced documents attached to the application (**Attachment F**). A boardinghouse business is prohibited within the Zoning District and is incompatible with the zone and land use designation. The staff report outlines Mr. Hutchison's administrative appeal request in more detail.

Fiscal Impact:

None.

Environmental Review:

- ☒ Not subject to review
- ☒ Exempt, Section 15301
- ☐ Negative Declaration
- ☐ Mitigated Negative Declaration

Public Information:

- ☐ None
- ☐ Newsletter article
- ☐ Tribal Government Consultation Request
- ☒ Notice published in local newspaper
- ☒ Notice to property owners within 500 ft.

Attachments:

A. Staff Report
B. Resolution of Denial
C. Resolution of Conditional Approval
D. Letters from City to Appellant
E. First and Last Code Enforcement Citations
F. Appellant Application with Attachments
G. Letter from Appellant's Attorney
H. Letter from Special Counsel to the City of Lemon Grove
I. Complaint Letter from Neighboring Resident
J. Heartland Fire & Rescue Correction Notice
K. Aerial and Vicinity Map

LEMON GROVE CITY COUNCIL
STAFF REPORT

Item No. 2

Mtg. Date September 6, 2016

Item Title: **Public Hearing to Consider an Appeal AA1-600-0002 of the Development Services Director Determination Regarding the Denial of a Request to Install Nine Bedrooms (Room Addition and Remodel) to an Existing Five Bedroom House and to Permit the Operation of a Boardinghouse Located at 2545 Crestline Drive in the Residential Low/Medium Zone.**

Staff Contact: David De Vries, Development Services Director
Miranda Evans, Assistant Planner

Background:

On June 4, 2014, the subject property was listed for sale as a "fixer upper" five bedroom/four bathroom house. County Assessor Residential Building Records confirm the house was built with permits for a five-bedroom dwelling. The property owner and appellant, City Redevelopment LLC, purchased the property on October 30, 2014.

On December 14, 2015, the City Code Enforcement Division issued an administrative citation and warning to the property owner (represented by the appellant) of the subject property for non-permitted construction at the subject property. Based on inspections, a garage conversion to habitable living space, an interior remodel, and a room addition occurred on-site without appropriate building permits obtained. Seventeen new bedrooms were added to the subject property (22 bedrooms total) since the property's purchase in 2014. This appeal only addresses the permit denial for the nine bedrooms requested to be installed.

Since the initial warning, seventeen subsequent administrative citations and fines were issued with the last citation and fine issued on May 2, 2016. The sum of the total fines issued, excluding late payment and interest penalties, is $14,800. These civil citations are currently outstanding and were not appealed. No payments have been made to-date.

On June 6, 2016, a building permit application request to correct the violations was submitted. The request included an addition and remodel adding nine bedrooms to the existing five bedroom house and included reconverting the garage, which contains additional bedrooms, back to a garage.

On June 23, 2016, after department corrections had been issued on the above referenced building permit application, the Development Services Director issued a zoning violation letter (**Attachment D**) to the designer and property owner stating that the subject property is not compatible with the General Plan Land Use Designation or Zoning District and also that City Redevelopment LLC's business at the subject property is a boardinghouse in accordance with Title 17 of the Lemon Grove Municipal Code. The designer for the building permit plans, Mr. Abbas Keshavarzi, stated that rooms within the subject property were rented separately. Further online investigations (e.g., craigslist advertisement) and interviews with the tenants and the District House Manager, Adriana Valdespino, confirmed that rooms were rented furnished to individuals through a month-to-month lease. No representative for the property lives on-site; no supervised care is provided on-site; and no state licenses exist for the subject property. Based on evidence, it appears that meals are provided on-site. During a site inspection, memorandums posted at the entrance in the living room of the facility stated two meals (breakfast and dinner) are provided per day to each resident. Upon inspection of the kitchen, one refrigerator on-site was

locked and there was no evidence that food for each tenant is allowed to be stored on-site. An interview with a tenant, Darrell Clark, confirmed that meals were provided on-site and a neighbor stated food is delivered to the property daily. Also, online advertisements stated two meals are provided per day.

On July 17, 2016, the Development Services Department informed the property owner of rights to appeal a decision of the Development Services Director to the City Council (**Attachment D**). This was sent to the property owner after acknowledging objections to the zoning violation letter that were emailed by the appellant on July 13, 2016.

On July 27, 2016, Mr. Tim Hutchison, filed an appeal application stating that the proposed use is not a boardinghouse and referenced several attachments (**Attachment F**). Staff has no additional response to the appellant's justification except as stated herein.

On August 11, 2016, Heartland Fire and Rescue, in conjunction with City Planning and Code Enforcement Staff, visited 2545 Crestline Drive for an inspection. Numerous life and fire safety hazards and violations were identified (**Attachment J**). A reinspection of the subject property will occur on or after September 11, 2016.

On August 25, 2016, the City received a letter from Jason Turner, an attorney retained to represent the appellant, with regard to legal arguments lodged against the permit denial and in support of the appeal (**Attachment G**).

On August 29, 2016, the City received a complaint letter from a neighboring resident (**Attachment I**).

On August 31, 2016, Special Counsel to the City of Lemon Grove, Chance Hawkins, prepared a written response to the appellant's attorney on behalf of the City (**Attachment H)**.

Discussion:

The purpose of this appeal is to determine whether or not a boardinghouse business, consisting of 14 bedrooms rented separated with meals provided on-site should be allowed within the Residential Low/Medium Zoning District and whether the proposed land use is compatible with the Low/Medium Density Residential Land Use Designation which is principally designated for single-family detached housing.

The process for land use decisions begins with the General Plan. The General Plan Land Use Designation for this property is Low/Medium Density Residential which primarily allows for detached houses and accessory dwelling units, day cares, open space, public facilities, and home businesses which are compatible with the surrounding neighborhood.

The corresponding zones are established to prevent conflicting land uses from being located next to each other or within the vicinity, specifically: to promote, protect and preserve the public health, safety, peace, comfort and general welfare. The subject property is located in the Residential Low/Medium Zone which permits and conditionally permits single-family dwellings, accessory rental dwelling units, senior citizen housing, daycares, residential care facilities, parks, playgrounds, churches, schools, and public service and utility structures and facilities.

The Development Services Director determined the appellant's request is not compatible with the property's land use designation and zoning district. The surrounding land uses are almost entirely detached single-family dwellings consisting of five bedrooms or less. A 2,300 sq. ft. house with 14 bedrooms being rented individually is not compatible with the character of a single-family residential neighborhood.

Also, both Heartland Fire and Rescue and the County Sheriff's Department have had numerous calls for service for the subject property within the last year (approximately 48 and 87

respectively). Staff has received complaints from neighbors about tenants at the subject property trespassing on the neighbors' properties and asking for help. The property owner has a history of construction without permits, therefore creating safety concerns on-site. The land use has negatively affected the integrity of the neighborhood and the public health, safety, peace, comfort and general welfare.

The Municipal Code further defines a dwelling and boardinghouse as follows:

> "Dwelling" means a building, or portion thereof, designed for or occupied exclusively for residential purposes, but not including hotels, motels, or boardinghouses.
>
> "Boardinghouse" means a dwelling or part thereof (not residential care facilities), where lodging with or without meals is provided for compensation. The boardinghouse shall have no more than five guest rooms (without separate cooking facilities), nor accommodate more than ten persons total. Lodging shall be provided for a time period of more than thirty days.

Based on evidence provided by the applicant, research online, site inspections, and conversations with the appellant and site manager, the appellant intends to rent, and is currently renting the rooms individually with no supervised care with two meals a day provided to the tenants. The Director's determination is that the proposed land use is most consistent with the definition of a boardinghouse because lodging is provided for compensation and meals are provided on-site. The proposed land use is not a residential care facility because 24-hour supervision is not provided on-site. The definition of dwelling exempts boardinghouses and therefore cannot be permitted in the zoning district the subject property is located in.

The Municipal Code is constructed as a restrictive code and it identifies only the uses that are allowed by right or by discretionary permit. Where the Municipal Code is silent or a particular use does not meet the functional and/or operational characteristics of an identified allowable use, that use is prohibited. Here, the appellant's business of renting units to 14 separate residents in what was originally a five-bedroom single-family home is not listed as a permitted use.

Should the City Council find that the appellant's use of the property is not compatible with the zoning district and that the site is being used as a boardinghouse, the City Council may uphold the decision of the Development Services Director, further denying the land use request and related building permit request (**Attachment B**). Should the City Council find that the appellant's use of the property is compatible with the zoning district and that the site is not being used as a boardinghouse and is a single-family dwelling, per the appellants' request, then the City Council may reverse the decision of the Development Services Director and approve the land use and related building permit request (**Attachment C**).

If the City Council denies the appeal and upholds the Director's denial of the permit application, then the property would be required to be vacated and permits to demolish the unpermitted room additions and garage conversion would be required. Outstanding code enforcement fees with late payment and interest penalties would be required to be paid. The appellant will be allowed 90 days from the date of denial to vacate the subject property and correct the unpermitted construction prior to further code enforcement action commencing.

If the City Council upholds the appeal and reverses the Director's denial, then the appellant bears the burden of proof to provide appropriate evidence to overturn the Director's determination. The building permit request for an additional nine bedrooms would be allowed to be permitted based on a determination by the City Council that the appellant's building permit request maintains the property as a single-family dwelling (as requested by the appellant) and the operation of rooms rented separately with meals provided on-site would be allowed to continue with a finding that the

proposed use does not impact the public health, safety, peace, comfort and general welfare. Outstanding code enforcement fees with late payment and interest penalties would be required to be paid. The appellant will be allowed 90 days from the date of approval to obtain final building permits for the nine bedroom addition on the subject property prior to further code enforcement action commencing.

Additionally, there could be further enforcement based on Building and Fire Code violations resulting from the unpermitted construction. Heartland Fire & Rescue inspected the property on August 11, 2016 (**Attachment J**). The facility has inadequate fire suppression systems which is a serious public safety concern.

Public Information:

The Notice of Public Hearing for this item was published in the August 25, 2016 edition of the East County Californian and mailed to all property owners within 500 feet of the subject property.

The City received one written letter in response to the Notice of Public Hearing. Staff will provide the City Council at the time of the public hearing with any additional written comments that may come in past the distribution of the staff report.

Conclusion:

Staff recommends that the City Council conduct a public hearing and either adopt a Resolution (**Attachment B**) upholding the Development Services Director determination to deny the installation of a nine bedroom addition and the operation of a boardinghouse or adopt a Resolution (**Attachment C**) reversing the decision of the Development Services Director conditionally approving the nine bedroom addition and the operation of the proposed land use located at 2545 Crestline Drive in the Residential Low/Medium Zone.

Attachment B

RESOLUTION NO. [ ]

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE UPHOLDING THE DECISION OF THE DEVELOPMENT SERVICES DIRECTOR DENYING THE REQUEST TO INSTALL NINE BEDROOMS (ROOM ADDITION AND REMODEL) TO AN EXISTING FIVE BEDROOM HOUSE AND TO PERMIT THE OPERATION OF A BOARDINGHOUSE AT 2545 CRESTLINE DRIVE, LEMON GROVE, CALIFORNIA

WHEREAS, on June 4, 2014, the subject property was listed for sale as a five bedroom/ four bathroom house. County Assessor Residential Building Records construction records confirm the house was built with permits for a five-bedroom dwelling; and

WHEREAS, the property owner, City Redevelopment LLC, purchased the property on October 30, 2014; and

WHEREAS, on December 14, 2015, the City Code Enforcement Division issued an administrative citation and warning to the property owner of the subject property for non-permitted construction at the subject property. Based on inspections, a garage conversion to habitable living space, an interior remodel, and a room addition occurred on-site without appropriate building permits obtained. Seventeen new bedrooms were added to the subject property (22 bedrooms total). Seventeen subsequent administrative citations and fines were issued with the last citation and fine issued on May 2, 2016. The sum of the total fines issued, excluding late payment and interest penalties, is $14,800. These civil citations are currently outstanding and were not appealed. No payments have been made to-date; and

WHEREAS, On June 6, 2016, a building permit application request to correct the violations was submitted. The request included an addition and remodel adding nine bedrooms to the existing five bedroom house and included reconverting the garage back to a garage; and

WHEREAS, on June 23, 2016, after department corrections had been issued on the above referenced building permit application, the Development Services Director issued a zoning violation letter to the property owner stating that the subject property is not compatible with the General Plan Land Use Designation or Zoning District and is recognized as a boardinghouse in accordance with Title 17 of the Lemon Grove Municipal Code. The designer for the building permit plans, Mr. Abbas Keshavarzi, stated that rooms within the subject property were rented separately. Further online investigations (e.g., craiglist advertisement) and interviews with the tenants and the District House Manager, Adriana Valdespino, confirmed that rooms were rented furnished to individuals through a month-to-month lease. No representative for the property lives on-site; no supervised care is provided on-site; and no state licenses exist for the subject property. Evidence appears to indicate that meals are provided on-site. During a site inspection, memorandums posted at the entrance in the living room of the facility on the wall encased in plastic in the living room stated two meals (breakfast and dinner) are provided per day to each resident. Upon inspection of the kitchen, one refrigerator on-site was locked and there was no evidence that food for each tenant is allowed to be stored on-site. An interview with a tenant, Darrell Clark, confirmed that meals were provided on-site and a neighbor stated food is delivered to the property daily. Also, online advertisements stated two meals are provided per day; and

WHEREAS, on July 17, 2016, the Development Services Department informed the property owner of rights to appeal a decision of the Development Services Director to the City Council; and

WHEREAS, on July 27, 2016, Mr. Tim Hutchison, on behalf of City Redevelopment LLC, filed an appeal application (AA1-600-0002) stating that the proposed use is not a boardinghouse and referenced several attachments; and

Attachment B

WHEREAS, a boardinghouse is defined as a dwelling or part thereof (not residential care facilities), where lodging with or without meals is provided for compensation. The boardinghouse shall have no more than five guest rooms (without separate cooking facilities), nor accommodate more than ten persons total. Lodging shall be provided for a time period of more than thirty days; and

WHEREAS, the City Council duly noticed and held a public hearing on September 6, 2016 to consider the appeal of the Development Services Director determination; and

WHEREAS, the City Council determines that the appellant's request is not compatible with the land use designation and zoning district because of the following reasons:

1) A 14-bedroom rental business is not a permitted use within the Residential Low/Medium Zone of the City;

2) This land use is not in character with the nature of the residential neighborhood and has negatively affected its integrity. The surrounding land uses are almost entirely detached single-family dwellings consisting of five bedrooms or less;

3) The request to install nine additional bedrooms to a 5-bedroom 2,300 square foot house with five foot setbacks between neighboring properties is not in character with the nature of the residential neighborhood;

4) The request to install nine bedrooms qualifies the property as a boardinghouse under the Lemon Grove Municipal Code and therefore the use is prohibited in Residential Low/Medium Zone of the City;

5) Appellant's use of the property has negatively affected, and continues to affect, the public health, safety, peace, comfort and general welfare of the character of the residential neighborhood and its residents because: a) Heartland Fire and Rescue and the County Sheriff's Department have had excessive calls for service for the subject property within the last year (approximately 48 and 87 respectively); and b) The City has received complaints from neighbors about tenants at the subject property trespassing on the neighbors properties, disturbing their peace and quiet and coming to them to ask for help because none was provided at the property; and

6) Appellant's significant construction without any building, fire or safety inspections by the City creates safety concerns for the property and the residents on-site; and

WHEREAS, the appeal of this determination is not a project and is not subject to the environmental review requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, Appellant City Redevelopment LLC and its attorney appeared at the September 6, 2016 public hearing to advocate their appeal; and

WHEREAS, concerned residents in the neighborhood appeared at the hearing and expressed their concerns about the property and how it has negatively affected the nature of the neighborhood and created concerns for public safety; and

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Denies City Redevelopment LLC's Administrative Appeal AA1-600-0002 based on the above-findings; and
2. Upholds the Development Services Director's June 23, 2016 permit denial letter denying the installation of a nine bedroom addition and the operation of a boardinghouse at 2545 Crestline Drive, Lemon Grove, CA.

/ / / / /
/ / / / /

Attachment C

RESOLUTION NO. [ ]

RESOLUTION OF THE CITY COUNCIL OF THE [CITY OF LEMON GROVE REVERSING THE DECISION OF THE DEVELOPMENT SERVICES DIRECTOR CONDITIONALLY APPROVING THE REQUEST TO INSTALL NINE BEDROOMS (ROOM ADDITION AND REMODEL) TO AN EXISTING FIVE BEDROOM HOUSE AND TO PERMIT THE OPERATION OF ROOMS RENTED SEPERATELY WITH MEALS PROVIDED ON-SITE AT 2545 CRESTLINE DRIVE, LEMON GROVE, CALIFORNIA]

[**WHEREAS,** on June 4, 2014, the subject property was listed for sale as a five bedroom/ four bathroom house. County Assessor Residential Building Records construction records confirm the house was built with permits for a five-bedroom dwelling; and

WHEREAS, the property owner, City Redevelopment LLC, purchased the property on October 30, 2014; and

WHEREAS, on December 14, 2015, the City Code Enforcement Division issued an administrative citation and warning to the property owner of the subject property for non-permitted construction at the subject property. Based on inspections, a garage conversion to habitable living space, an interior remodel, and a room addition occurred on-site without appropriate building permits obtained. Seventeen new bedrooms were added to the subject property (22 bedrooms total). Seventeen subsequent administrative citations and fines were issued with the last citation and fine issued on May 2, 2016. The sum of the total fines issued, excluding late payment and interest penalties, is $14,800. These civil citations are currently outstanding and were not appealed. No payments have been made to-date; and

WHEREAS, On June 6, 2016, a building permit application request to correct the violations was submitted. The request included an addition and remodel adding nine bedrooms to the existing five bedroom house and included reconverting the garage back to a garage; and

WHEREAS, on June 23, 2016, after department corrections had been issued on the above referenced building permit application, the Development Services Director issued a zoning violation letter to the property owner stating that the subject property is not compatible with the General Plan Land Use Designation or Zoning District and is recognized as a boardinghouse in accordance with Title 17 of the Lemon Grove Municipal Code; and

WHEREAS, on July 17, 2016, the Development Services Department informed the property owner of rights to appeal a decision of the Development Services Director to the City Council; and

WHEREAS, on July 27, 2016, Mr. Tim Hutchison, on behalf of City Redevelopment LLC, filed an appeal application (AA1-600-0002) stating that the proposed use is not a boardinghouse and referenced several attachments; and

WHEREAS, the City Council duly noticed and held a public hearing on September 6, 2016 to consider the appeal of the Development Services Director determination; and

WHEREAS, the City Council finds that the operation of rooms rented separately with or without meals provided on-site is consistent with the operation and definition of a single-family dwelling and is a permitted use within the Residential Low/Medium Zone of the City and the more than five bedrooms within a single-family dwelling is permissible; and

WHEREAS, the City Council determines that the appellant's request is compatible with the land use designation and zoning district and that the land use does not negatively affect the integrity of the neighborhood and the public health, safety, peace, comfort and general welfare; and

Attachment C

WHEREAS, the project is found to be categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15301; and

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Reverses the determination of the Development Services Director and conditionally approves a fourteen bedroom house with rooms rented separately and meals provided on-site at 2545 Crestline Drive, Lemon Grove, CA. The appellant shall comply with the following conditions of approval:

    a. Within 90 days, building permits shall be finaled for all non-permitted construction on-site. A two-car garage is required to be retained.

    b. Outstanding code enforcement fees with late payment and interest penalties shall be paid prior to building permit issuance.

/ / / / /
/ / / / /

CITY OF LEMON GROVE

"Best Climate On Earth"

Development Services Department

June 23, 2016

City Redevelopment LLC
10606 Camino Ruiz #8130
San Diego, CA 92126-3263

SUBJECT: 2545 Crestline Drive, Project Number B16-000-0344

To Whom It May Concern:

After a review of the proposed project at 2545 Crestline Drive, the Development Services Director has determined that the subject property is not compatible with the General Plan Land Use Designation or Zoning District and is recognized as a boardinghouse in accordance with Title 17 of the Lemon Grove Municipal Code.

The subject property has five legal bedrooms according to County Assessor Building and Construction Records. The proposed addition includes nine unpermitted bedrooms, resulting in a verified total of 14 bedrooms. According to Mr. Abbas Keshavarzi, upon submittal on June 6, 2016, he stated that the rooms are being rented out and additional evidence on these rooms being rented has been obtained online.

Please revise your plans to reflect the approved conditions on site (5 bedrooms or less). Please disregard previous comments provided as appropriate. The addition may be demolished or permitted as a family room or other area compatible with the residential character and requirements of the Residential Low/Medium Zoning District. If the addition is demolished, then the City will issue a refund of your plan check fee (up to 80%). Failure to cooperate with this directive in a timely manner will result in additional code enforcement actions.

Additionally, there is a history of code enforcement violations with the subject property. To date, there is an outstanding balance of $14,800 for the following violations:

- Violation of the 2013 CA Building Code Chapter 1, Section 5: Permits (non-permitted construction); and
- Uniform Administrative Code Chapter 3, Permits and Inspections (non-permitted construction).

Please remit payment to the City within 30-days to avoid collections.

Sincerely,

Miranda Evans
Assistant Planner

CC: David De Vries, Development Services Director
Chris Jensen, Fire Marshall
Paolo Romero, Code Enforcement Officer
Kurt Culver, Esgil Building Official
Abbas Keshavarzi, Project Designer

3232 Main Street Lemon Grove California 91945-1705
619.825.3805 FAX: 619.825.3818 www.ci.lemon-grove.ca.us

Attachment D

CITY OF LEMON GROVE "Best Climate On Earth"

Development Services Department

July 17, 2016

City Redevelopment LLC
10606 Camino Ruiz #8130
San Diego, CA 92126-3263

SUBJECT: 2545 Crestline Drive, Project Number B16-000-0344

To Whom It May Concern:

Based on the email correspondence received on July 13, 2016, it is our understanding that you object to the Development Services Director's determination. This decision may be appealed. If you wish to move forward, your official written appeal must be submitted within 10-days from the date of this letter. A copy of the administrative appeal form is attached and a $75 application fee will be required.

Please be aware the information contained within the previous letter dated June 23, 2016 is still applicable to the subject property, related permits and code enforcement action. You may contact me at 619-825-3813 with any questions and to schedule the submittal of your appeal.

Sincerely,

Miranda Evans
Assistant Planner

CC: David De Vries, Development Services Director
Paolo Romero, Code Enforcement Officer
Abbas Keshavarzi, Project Designer

CITY OF LEMON GROVE
ADMINISTRATIVE CITATION

A) TYPE OF VIOLATION

Circle One: (Warning) 1st Citation $100 | 2nd Citation $200 | 3rd Citation $500 | 4th Citation $1,000

Payment of $ 0 is due no later than December 14, 2015 to the City of Lemon Grove. The City accepts cash, check or credit card.

If the violation is not corrected by the date specified therein and/or payment is not received by the date above, the next level of citation may be issued, other enforcement actions may occur, and penalties may be assessed (25% and interest at the rate of 10% per annum). Payment of fine does not excuse or discharge the failure to correct violation identified below.

B) RESPONSIBLE PARTY INFORMATION

Person(s) Cited: 1) City Redevelopment LLC 2) _____

Circle One: (Property Owner) Tenant Business Owner Other _____

Mailing Address: 1) 10606 Camino Ruiz #8130 San Diego, CA 92126-3263

2) _____

Business Name (if applicable): _____

C) VIOLATION(S) INFORMATION

Date (Violation Observed): December 9, 2015 Time (Violation Observed): —

Location of Violation: 2545 Crestline Drive (Street Address) 480-583-01-00 (APN)

Violation(s) Observed (Code Section and Description):

2013 CA Building Code Chapter 1 Section 5 - Permits

D) CORRECTION(S) REQUIRED TO BE COMPLETED BY: Obtain permits for the non-permitted construction at 2545 Crestline Drive by December 14 2015

E) SERVICING CITATION INFORMATION

Enforcing Officer Name	Phone No.	Signature	Date
Paola Romero	(619) 825-3800	Paola Romero	12-9-15

Citation Served (circle one): In Person (By Mail) Posted on Property

This citation may be appealed within thirty (30) days from date of correction identified in Section D. To request an appeal, a Request an Appeal Hearing form (available at City Hall or on the City website www.lemongrove.ca.gov)) should be completed and returned to City Hall. In the event a Hardship Waiver is requested, the Request for an Appeal Hearing and Hardship Waiver forms are required within fifteen (15) days from the correction date identified in Section D.

WHITE-ORIGINAL CITATION CARD-OWNER

Attachment E

CITY OF LEMON GROVE
ADMINISTRATIVE CITATION

A) TYPE OF VIOLATION

Circle One: Warning | 1st Citation $100 | 2nd Citation $200 | 3rd Citation $500 | 4th Citation (**$1,000**)

Payment of $ 1,000 is due no later than June 2, 2016 to the City of Lemon Grove. The City accepts cash, check or credit card.

If the violation is not corrected by the date specified therein and/or payment is not received by the date above, the next level of citation may be issued, other enforcement actions may occur, and penalties may be assessed (25% and interest at the rate of 10% per annum). Payment of fine does not excuse or discharge the failure to correct violation identified below.

B) RESPONSIBLE PARTY INFORMATION

Person(s) Cited: 1) City Redevelopment LLC 2) _____

Circle One: (Property Owner) Tenant Business Owner Other _____

Mailing Address: 1) 10606 Camino Ruiz #8130 San Diego, CA 92126-3263

2) _____

Business Name (if applicable): _____

C) VIOLATION(S) INFORMATION

Date (Violation Observed): May 2, 2016 Time (Violation Observed): —

Location of Violation: 2545 Crestline Drive (Street Address) 480-573-01-00 (APN)

Violation(s) Observed (Code Section and Description):

- 2013 CA Building Code Chapter 1 Section 5- Permits
- Uniform Administrative Code Chapter 3- Permits and Inspections

D) CORRECTION(S) REQUIRED TO BE COMPLETED BY: Obtain permits for the non-permitted construction at 2545 Crestline Drive by May 3, 2016

E) SERVICING CITATION INFORMATION

Enforcing Officer Name	Phone No.	Signature	Date
Paolo Romero	(619) 825-3800	Paul Ro	5-2-16

Citation Served (circle one): In Person (By Mail) (Posted on Property)

This citation may be appealed within thirty (30) days from date of correction identified in Section D. To request an appeal, a Request an Appeal Hearing form (available at City Hall or on the City website www.lemongrove.ca.gov)) should be completed and returned to City Hall. In the event a Hardship Waiver is requested, the Request for an Appeal Hearing and Hardship Waiver forms are required within fifteen (15) days from the correction date identified in Section D.

WHITE-ORIGINAL CITATION CARD-OWNER

Attachment F

APPEAL APPLICATION & REQUEST FOR PUBLIC HEARING

Community Development Department / Planning Division
3232 Main Street, Lemon Grove, CA 91945
Phone: 619-825-3805 Fax: 619-825-3818
www.ci.lemon-grove.ca.us

APPLICANT: City Redevelopment, LLC
PHONE: (858) 635-5549 x143
ADDRESS: 2545 Crestline Dr.
Lemon Grove, CA 91945
FAX: (858) 345-3734
EMAIL: tim@cityredev.com

CASE/PROJECT NUMBER: B16-000-0344

DECISION /CONDITIONS OF APPROVAL BEING APPEALED (INCLUDE CONDITION ITEM NUMBERS):

2545 Crestline Dr. is not a Boarding House as being accused by the City of Lemon Grove planning department. Substancial proof with documentation was emailed and attached to this letter. Please allow us to address the original code violation of unpermitted addition and accept the architect's plans that were finally submitted on June 6, 2016 after many corrections. Please also waive any fines associated with this as we have been in cooperation the entire time as stated with specific examples in attached emails.

SPECIFIC REASON(S) FOR APPEAL OR REQUEST FOR PUBLIC HEARING:

We want to be in compliance, please see attached emails and proof and let us permit any work the code violation officer original noted. Until this acquisation of a "Boarding House" is cleared up, we are at a standstill. Please also note that existing structure has been the same for 50 years and only changes are recent addition, we do understand we are the new titled owner though and will bring everything to permitted status as required by the city.

Attach additional sheets if necessary.

Applicant's Signature

7/27/16
Date

TO BE COMPLETED BY PLANNING STAFF

FILE #(s):
DATE:
FEES: RECEIPT #:

CITY OF
JUL 27 2016
DEVELOPMENT SERVICES

COMMENTS and/or CONDITIONS:

Attachment F

CITY REDEVELOPMENT
Investments

10606 Camino Ruiz, Suite #8130 - San Diego, CA 92126
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e: info@cityredev.com, www.cityredev.com

August 30, 2016

City Council
City of Lemon Grove
(Sent via Email)

Subject: Appeal of Development Service Directors Decision 2545 Crestline Dr, Lemon Grove, CA 91945

Dear City Council:

In addition to Mr. Jason Turner's letter, all email correspondence with facts, email attachments of Independent Living, email attachments of CA Supreme Court Case rulings, we would just like to say a few other things that are important to us, the residents, and the City of Lemon Grove as a whole:

Our projects, as with any City are a win/win for the City and its residents:
*We provide affordable housing (a must in CA).
*No taxpayer subsidies or local government subsidies.
*Take people off the streets from being homeless.
*Invest tens of thousands (even hundreds of thousands) into the residence making it the nicest on the block using local retailers such as Home Depot that pay sales tax to the City.
*Use local workers that reside in the city that creates work for them.
*Pay our dues to the City through permits when much of the neighborhood has illegal additions and converted garages.
*Help people in need that no one can disagree with.

Taking people off of the streets and avoiding people being homeless is a good thing. A block from the City offices near the trolley we have noticed there is an epidemic of homeless and disabled people, several city workers have told us in confidence that they won't even leave work that way because of fear. Residences like our help to correct this problem.

At this point we feel we are being unfairly targeted from within the City and the Development Services Department for doing nothing but a good thing? This is clear by the limited responses, different reasons given from within the City Development Services, and what we feel as no one even thoroughly reading our emailed responses. There are many Independent Living's located within the City of Lemon Grove and I don't believe anyone can deny this who works for the City of Lemon Grove. We pride ourselves on being one of the better Independent Livings, which is another reason we have been so cooperative with the City in the permitting process requested by code enforcement originally.

CITY DEVELOPMENT Investments

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Most other Cities within the County of San Diego are very happy with the work we have done and we have never had an issue go this far to City Council after all of the information and facts provided. Most would believe that this is a good thing for each and every City which is why the county of San Diego promotes it through County funded "Community Health Improvement Partners."

We hope that we can all learn from this process as it has been very time-consuming, stressful, and expensive for all parties involved. Hopefully in the future it can be avoided completely from the Development Services Department.

Again, thank you for your time and consideration and we look forward to being a good neighbor of the City of Lemon Grove and helping the less fortunate.

Sincerely,

Tim Hutchison
City redevelopment, LLC

Attachment F

CITY DEVELOPMENT Investors

Tim H <tim@cityredev.com>

Re: Fw: RE: 2545 Crestline Drive -Boarding House vs Independent Living

Tim H <tim@cityredev.com> Tue, Aug 30, 2016 at 3:21 PM
Draft To: David DeVries <ddevries@lemongrove.ca.gov>
Cc: Miranda Evans <mevans@lemongrove.ca.gov>, "jturner@jturnerlawgroup.com" <jturner@jturnerlawgroup.com>, "sharon.rapport@csh.org" <sharon.rapport@csh.org>, Lydia Romero <lromero@lemongrove.ca.gov>

Thanks David for your response. Again I appreciate that you "understand our arguments" against the denial, and I understand if you cant at this point, but would really like responses to the detailed emails we send you, as it seams as if no one is thoroughly reading them? If now that an "appeal" is started you can not comment then that's fine, but would like to know and understand this? I also find it very peculiar that this decision is not changed before an appeal based on the attorneys letter to you dated August 25th, 2016, it seams to us that it is pretty clear that this decision by the Development Service Director is not legally defensible in the court of law based on specific facts the attorney points out? Again if there is no stopping the appeal and the decision at this point, I guess we understand, but would like to know this is the case?

Items we would like to be included in the appeal on our behalf:

#1: Our attorney letter from J. Turner Law Group, APC sent to you on 8?25/16 and attached to this email.

#2: All other attachments in this email describing Independent Living and being used as references in our emails, legal case City of Santa Barbara vs Adamson and study, etc.

#3: All email correspondence between us and the City, attached previously with new items added to this email.

#4: Our written statement to the City Council in addition to everything else that has been provided, attached below.

Again, we are saddened by the fact that we are not able to review the staff report that will be provided by your staff to city counsel on Thursday September 1st PRIOR to the city council reviewing it. Being its our appeal of the Development Service Directors decision, I would hope that we would be able to see what is being prepared prior to it being handed to the ultimate decision makers.

Thanks for your cooperation and as stated before we intend on being a good resident of the City of Lemon Grove obtaining any permits for anything not permitted previously and helping the less fortunate with affordable housing.

Tim
City Redevelopment, LLC
858-635-5549 x143

On Fri, Aug 26, 2016 at 8:21 AM, David DeVries <ddevries@lemongrove.ca.gov> wrote:

> Mr. Hutchison, since you have requested an appeal of the Development Services Director's June 23, 2016 decision to deny your submitted plans the parties responsible for hearing your matter are the City Councilmembers in a public hearing.

I need to know if you would like us to include additional items in the staff report. Right now I have your completed appeal application with the items that were attached to that email with the completed appeal application. If there are any emails or other items you would like me to include on your behalf, please let me know. You can also prepare your own written statement that we can provide to City Council before your appeal hearing as well.

We understand your arguments against the denial but they should be directed towards City Council at and during the September 6th hearing through the public hearing appeal process.

Thank you for your attention to this matter.

Thanks,

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

3232 Main St.

Lemon Grove, CA 91945

(619) 825-3812 phone

(619) 825-3818 fax

ddevries@lemongrove.ca.gov

www.lemongrove.ca.gov

From: Tim M [mailto:tim@cityredev.com]
Sent: Thursday, August 25, 2016 1:56 PM
To: David DeVries <ddevries@lemongrove.ca.gov>; Lydia Romero <lromero@lemongrove.ca.gov>
Cc: Paolo Romero <promero@lemongrove.ca.gov>; Miranda Evans <mevans@lemongrove.ca.gov>; Patti Peterson <ppeterson@lemongrove.ca.gov>; jturner@jturnerlawgroup.com; Marjie Cappiello <mcappiello@lemongrove.ca.gov>; sharon.rapport@csh.org
Subject: Re: Fw: RE: 2545 Crestline Drive -Boarding House vs Independent Living

David & Lydia,

Attachment F

Being that Development Services Director has not changed his findings of our home on 2545 Crestline Dr as a Boarding House and it does not seem like anyone from the City of Lemon Grove is thoroughly reviewing the attachments on the emails sent, I would like to point out some basic facts below that hopefully the City Attorney can review and possibly come to a different conclusion. We don't feel this even needs to go any further and we wish to cooperate in full with the city's building codes and permit anything not permitted or in compliance. Our hands are tied though until this decision is overturned placing limitations on what we can permit.

Lemon Grove Municipal Code:

17.08.030 Definitions.

"Boardinghouse" means a dwelling or part thereof (not residential care facilities), where lodging with or without meals is provided for compensation. The boardinghouse shall have no more than five guest rooms (without separate cooking facilities), nor accommodate more than ten persons total. Lodging shall be provided for a time period of more than thirty days.

ILA by Community Health Improvement Partners (funded by the County of San Diego):

1. Definition of Family:

Why independent living homes may locate in residential zones in California:

In a 1980 California Supreme Court decision, *City of Santa Barbara v. Adamson*, the court ruled, based on privacy rights, that definitions of "family" for purposes of zoning cannot distinguish between related and unrelated individuals. Therefore, **local governments cannot limit the number of unrelated adults that may reside together functioning as a family if they do not limit the number of related persons.** However, several local governments still attempt to use or enforce an illegal definition of family.

By limiting our home at 2545 Crestline Dr to 5 bedrooms when there is nothing in the Lemon Grove Building code that limits a minimum or maximum number of bedrooms, you are placing an unfair regulation on our home. In addition to limit no more than 10 people in the home would be against a California Supreme Court decision.

With all of the material and information sent, I hope this simplifies a basic decision that should be overturned based off the facts sent. We do not wish to tie up any more of the city's valuable time and more importantly tax payers money on this issue if we can avoid it.

Again we apologize in advance for all of the email correspondence, just please remember this is a result of the city's findings and David suggested sending over anything that would change the Development Service Directors decision we feel is unfair.

Thank you in advance, and we look forward to being a good neighbor, helping the less fortunate with affordable housing, and being in compliance with the City of Lemon Grove at all times.

Tim
City Redevelopment, LLC
858-583-3278

On Wed, Aug 24, 2016 at 6:23 PM, Tim M <tim@cityredev.com> wrote:

David,

It was a pleasure speaking with you Monday 8/22/16, as always you were detailed and very knowledgeable. You are correct that the fee's have been reasonable thus far other than the $14,800 in code enforcement fines while cooperating with the City throughout this process. Thank you for the clarification of the Development Services Directors official stance as classifying our home as a "Boarding House" rather than "Group Home" or "Licensed Facility" Miranda discussed verbally over the phone on with me on 7/26/16. Being that you stated, "the City of Lemon Grove would not be able to provide us with specific reasoning or proof leading to their decision of classifying us as a Boarding House" other than they assumed meals were provided occasionally at first, followed later that certain rooms were rented individually; we would really like to review what is being sent to all of our neighbors for our appeal of the Development Services Director decision prior to it being mailed if possible? We understand this is procedural for Appeals based on the LGMC you sent us, but were unaware that the whole neighborhood would be notified based off of the Development Services Director's decision and an appeal process.

After our conversation I also understand that an appeal is the only way to change the decision of the Development Services Director so we have consulted jturnerlawgroup, apc and Jason Turner (ILA council to Community Health Improvement Partners funded by the county of San Diego) and he will be writing you a letter to hopefully clarify this type of Independent Living as a family with the hopeful intention of avoiding an appeal to City Counsel all together. If this decision based off the Development Services Directors decision is granted it would change the trajectory of all the Independent Livings (which you acknowledged there are in the City) within the entire city of Lemon Grove as they would now be classified "Boarding Houses" and according to the CA Supreme Court this would not be allowed based on the 1980 ruling "City of Santa Barbara v Adamson."

In addition you stated that a staff report will be available September 1st, and we would like to view a copy of this before it is sent to City Counsel based on it being our appeal and the package that was sent over to Miranda Evans on July 27th to make sure all of our documentation sent is included, in particular all attachments if possible?

Again, sorry to bother you on this and we have every intention of fully cooperating with the City of Lemon Grove as the last thing we want is these individuals displaced back to the streets of Lemon Grove with what we feel is an incorrect classification of our home.

Attachment F

We look forward to resolving this so that we may permit the original addition in question and convert the garage back the way it was originally built by approving the plans Mr Keshavarzi previously submitted after changes on June 6th after multiple revisions by the city of Lemon Grove from previous visits by Mr Keshavarzi. We pride ourselves on being a good neighbor and helping the less fortunate.

thanks,

Tim

City Redevelopment, LLC

858-635-5549 x143

PS: All original attachments attached again for your reference.

On Mon, Aug 22, 2016 at 6:40 PM, David DeVries <ddevries@lemongrove.ca.gov> wrote:

Hi Tim, you can review the public notice Thursday it is posted in the paper and delivered to the property owners. Please email Patti at noon Thursday for a copy if you haven't received it already.

Thanks,

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

3232 Main St.

Lemon Grove, CA 91945

(619) 825-3812 phone

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ddevries@lemongrove.ca.gov

www.lemongrove.ca.gov

From: David DeVries
Sent: Monday, August 22, 2016 12:46 PM
To: 'Tim M' <tim@cityredev.com>

Cc: Paolo Romero <promero@lemongrove.ca.gov>; Miranda Evans <mevans@lemongrove.ca.gov>; David DeVries <ddevries@lemongrove.ca.gov>
Subject: RE: Fw: RE: 2545 Crestline Drive

Hi Tim, section 17.28.020(I) requires that public noticing for Development Service Director appeals. See below. Let me know if you have further questions.

I. Appeals. Any applicant or other interested person who is dissatisfied with the denial, approval, conditional approval, or other application decision made in the administration of this title may appeal the decision. Decisions made by the development services director are appealed to the city council. Decisions made by the development services director are appealed to the city council. Decisions made by the city council are final.

Appeal applications, accompanied by the filing fee, shall be filed within ten days following the date a decision is made, on forms provided by the development services department. Appeals of development services director decisions shall be submitted to the city clerk. Appeals will be heard at a public hearing that has been noticed according to subsection F and conducted according to subsection G. Failure of the appellate body to make a decision according to subsection H shall be deemed in agreement with the previous decision.

All rights of appeal are exhausted when the proceedings set forth herein have been completed. An applicant shall not apply for the same or similar use affecting all or part of the property within twelve months of the effective date of the decision of denial, or as otherwise specified at the time of the decision of denial.

F. Notices. The notice shall state the purpose of the notice, a project description, and an explanation of the permit process, and be given by a date certain to affected parties according to subsections (F)(1), (2) and (3), as appropriate.

1. Public Hearings. Notices for public hearings shall also state the time, place, and purpose of the public hearing and shall be given by publication at least ten days prior to the public hearing. Notices to affected property owners shall be given at least ten days prior to the public hearing according to subsection (F)(2).

2. Affected Property Owners. The notice shall be mailed to all real property owners within five hundred feet of all exterior boundaries of the subject property at least ten days prior to the decision. Notices shall be mailed using the names and addresses of the owners as shown on the latest equalized assessment roll in the office of the county assessor. Where the address of such owner is not shown on such assessment roll, failure to send notice by mail to such property owner shall not invalidate any proceedings in connection with such action. In the event that the number of owners to whom notice would be sent according to this subsection is greater than one thousand, then notices may, instead, be given by placing a display advertisement of at least one-eighth page in a newspaper having general circulation within the affected area.

3. California Environmental Quality Act (CEQA) and State Law. Notices shall be made according to Government Code Sections 65090 through 65091, as amended. Processing time frames will apply unless extended environmental review is required by state law or this code.

Attachment F

G. Public Hearings. A public hearing is the opportunity for the advisory body, the hearing body, or the appellate body to obtain public testimony or comments prior to making a decision. The public hearing shall be conducted in accordance with this chapter and Section 2.14.090 of this code. Public hearings may be continued to another time without requiring further public notice, so long as the future time and place are announced before adjournment of the hearing.

Thanks,

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

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Lemon Grove, CA 91945

(619) 825-3812 phone

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ddevries@lemongrove.ca.gov

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From: David DeVries
Sent: Monday, August 22, 2016 12:17 PM
To: 'Tim M' <tim@cityredev.com>
Cc: Paolo Romero <promero@lemongrove.ca.gov>; Miranda Evans <mevans@lemongrove.ca.gov>; 'keshavarziabbas@sbcglobal.net'< keshavarziabbas@sbcglobal.net>; David DeVries <ddevries@lemongrove.ca.gov>
Subject: RE: Fw: RE: 2545 Crestline Drive

Hi Tim, can you provide us a copy of your LLC for City Redevelopnent LLC. If this document does not reference you as the signatory for the LLC, you'll need to provide written authorization from the signatory to act on the LLC's behalf. Also, the building permit application was signed by Abbas Keshavarzi who was referenced as the owners agent, but we'll need the same property owner authorization from him. I'll need this by the end of day if possible.

Thanks,

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

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(619) 825-3812 phone

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From: David DeVries
Sent: Monday, August 22, 2016 9:53 AM
To: 'Tim M' <tim@cityredev.com>
Cc: Paolo Romero <promero@lemongrove.ca.gov>; Miranda Evans <mevans@lemongrove.ca.gov>; David DeVries <ddevries@lemongrove.ca.gov>
Subject: RE: Fw: RE: 2545 Crestline Drive

Hi Tim, the City Council appeal hearing for your item is scheduled for September 6, 2016 at 6pm at the Lemon Grove Community Center, 3146 School Lane, Lemon Grove, CA. The staff report will be available for your viewing on Thursday September 1st. The public notice in the paper and the 500 foot radius notice to property owners will go out on Thursday, August 25th. Please let myself or Miranda know if you have any questions.

Thanks,

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

3232 Main St.

Attachment F

Lemon Grove, CA 91945

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From: Miranda Evans
Sent: Wednesday, July 27, 2016 5:52 PM
To: 'Tim M' <tim@cityredev.com>
Cc: David DeVries <ddevries@lemongrove.ca.gov>; Paolo Romero <promero@lemongrove.ca.gov>
Subject: RE: Fw: RE: 2545 Crestline Drive

Thank you, Tim. I was unavailable to answer your phone call earlier. Your payment was received and your receipt is attached. You have been assigned Administrative Appeal Permit #AA1-600-0002. We will keep you apprised.

Thank you,

Miranda Evans

Assistant Planner

City of Lemon Grove

Development Services Department

3232 Main Street

Lemon Grove, CA 91945

(619) 825-3813 phone

(619) 825-3818 fax

mevans@lemongrove.ca.gov

www.lemongrove.ca.gov

From: Tim M [mailto:tim@cityredev.com]
Sent: Wednesday, July 27, 2016 4:45 PM

To: Miranda Evans <mevans@lemongrove.ca.gov>
Cc: David DeVries <ddevries@lemongrove.ca.gov>; Paolo Romero <promero@lemongrove.ca.gov>; Malik Tamimi <mtamimi@lemongrove.ca.gov>
Subject: Re: Fw: RE: 2545 Crestline Drive

Miranda,

It was a pleasure speaking with you and David yesterday, you both seam like very nice reasonable people and are doing a good service for the City of Lemon Grove. Please see the attached letter as discussed for the appeal as I was not able to have David come to a different conclusion after our talk. I have attached the completed Appeal Application with all of our email correspondence. In addition all previous attachments that were sent to you in email have been attached if you can include all of this for the City Counsel appeal. I will call your office before 5pm today to make the $75 payment for the application. Hopefully we can resolve this shortly after the appeal and I have explained to you and David that we are at a standstill until we have this decision. David explained he would mention this to Paulo so that we were not issued any other fines while we try to resolve this process. I will take yours and David's advise on letting this appeal process happen before having our attorney contact the City Attorney as you guys are correct in this just further complicating something that may be resolved through the appeal.

In response to your previous email listed below as we never officially responded to it, other than verbally over the phone which I understand you are just doing your job:

I appreciate the feedback and LGMC Research that was provided, however in my previous email I address with specific proof that we are not a "Boarding House" and sent you all the specifics of the reasons we were not along with what we feel is satisfactory proof. Being we received this email from you on July 14th, 2016 and your letter was post dated for July 17, 2016, we would have to assume that your decision was already made on a "Boarding House" prior to even reading our response. Also judging by the response we sent you below on July 13, 2016 about re-reading our email, your response on July 14, 2016 really would indicate to us at least that our July 13, 2016 email was not reviewed, our at least very carefully. Also when we verbally spoke Miranda 7/26/16 you asked if our residence at 2545 Lemon Grove was licensed? I responded "No" and is was if no one had even reviewed our responses via emails on July 13, 2016 and June 23, 2016? I do understand that this was a phone conversation and there is no way you could possibly know all of your cases off the top of your head, but it is extremely important for us and our residents living as a family in 2545 Crestline Dr.

Anyway, we know you and David especially are very busy, so this tiny issue is not your primary concern by any means and probably shouldn't be. We just feel it is important to note all of these things, as this is a big deal for us and the lower income residents living in the residence.

Thank you for your time and consideration, and as we said before we have every intention of being a good neighbor and in compliance with the City of Lemon Grove & the code compliance division.

thanks,

Attachment F

Tim

City Redevelopment, LLC

858-635-5549 x143

On Thu, Jul 14, 2016 at 10:30 AM, Miranda Evans <mevans@lemongrove.ca.gov> wrote:

Tim,

Thanks for the information and clarification. The Director's decision may be appealed to the City Council in accordance with Section 17.28.020 of the LGMC. Please review the information below and the attached letter. A copy of the letter will also be mailed to you today.

LGMC Research:

LGMC Definition

"Boardinghouse" means a dwelling or part thereof (not residential care facilities), where lodging with or without meals is provided for compensation. The boardinghouse shall have no more than five guest rooms (without separate cooking facilities), nor accommodate more than ten persons total. Lodging shall be provided for a time period of more than thirty days.

"Dwelling" means a building, or portion thereof, designed for or occupied exclusively for residential purposes, but not including hotels, motels, or boardinghouses.

1. "Dwelling unit" means one or more rooms, designed, occupied or intended as separate living quarters, with private sanitary and kitchen facilities, for the exclusive use of one household.

2. Dwelling, Single-Family. "Single-family dwelling" means a freestanding building, built on, or assembled pursuant to the requirements of the Uniform Building Code, or a mobile home as defined in the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401, et seq.), installed on a permanent foundation, designed or used exclusively for occupancy by one household and containing one dwelling unit.

3. Dwelling, Duplex. "Duplex dwelling" means a building designed or used exclusively for occupancy by two households and containing two dwelling units.

4. Dwelling, Multifamily. "Multifamily dwelling" means a building, or a portion of a building, containing three or more dwelling units.

5. Dwelling, Studio. "Studio dwelling" means a dwelling unit consisting of not more than one habitable room together with kitchen or kitchenette and sanitary facilities.

"Family" means one or more individuals occupying a dwelling unit, including transitional and supportive housing, and living as a single household. The term "family" shall not be construed

to include a fraternity, sorority, club, or other group of persons occupying a hotel, boardinghouse, or institution of any kind.

"Household" means one or more individuals living together in a single dwelling unit, with common access to and common use of all living and kitchen areas and facilities within the dwelling unit. This may include transitional and supportive housing.

"Nuisance" means an interference with the enjoyment and use of property.

"Room" means an undivided portion of the interior of a dwelling unit, excluding bathrooms, kitchens, closets, hallways and service porches.

17.04.050 Unlawful uses a public nuisance.

Any building or structure set up, erected, altered, built or moved, or any use of property contrary to the provisions of this title are declared to be unlawful and a public nuisance, and the city attorney may, upon order of the city council, immediately commence action or proceedings for the abatement and removal and enjoinment thereof in the manner provided by law, and may take such other steps and may apply to such court or courts as may have jurisdiction to abate and remove such building or structure or such use of property and restrain and enjoin any person from setting up, erecting, building, or moving any such building or using any property contrary to the provisions of this title.

17.04.100 Minimum standards specified.

In interpreting and applying the provisions of this title, unless otherwise stated, they shall be held to be the minimum requirements for the promotion of the public health, safety, peace, comfort and general welfare.

17.12.060 Compliance with regulations.

Except as provided in this development code:

A. No building or structure shall be erected and no existing building shall be moved, altered, added to, or enlarged, nor shall any land, building, or premises be used, or be designated to be used, for any purpose or in any manner, nor shall any yard or other open space surrounding any building be encroached upon or reduced, except as permitted by and in conformity to the regulations specified in this chapter for the land use district as set forth in the zoning map, or any amendment thereto.

B. No yard or open spaces provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building or any other lot.

Attachment F

C. It is unlawful to divide any parcel of land so as to create a parcel of land not meeting all of the requirements of this chapter.

D. No building or structure shall be erected nor shall any use be made of any land within any setback areas as shown on the zoning map except landscaping or vehicular or pedestrian thoroughfares, such setbacks being in addition to front or street side yards otherwise required herein.

E. No use shall be made of land in the city, which use is a nuisance to the area in which such use is made or intended to be made.

17.12.070 Uncertainty of use classifications.

A. It is recognized that in the development of a comprehensive zoning ordinance, not all uses of land can be listed, nor can all future uses of lands be anticipated. The listings of uses permitted or permitted subject to a conditional use permit in each zone, or subject to a conditional use permit, are illustrative and meant to indicate the types and scales of development intended for each district. A use may have been omitted from the list of those specified as permissible in each of the various districts herein designated, or ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this chapter. Where such uncertainty exists, the planning director shall determine the appropriate classification for any such use.

B. If the development services director believes that the determination of the appropriateness of a particular use in a zone should be made by the city council, all pertinent facts shall be transmitted to the planning commission for consideration at its next regular meeting. Any decision of the development services director may be appealed pursuant to Section 17.28.020 of this title.

C. No provision of this title allows for the location of a marijuana dispensary or marijuana collective within any zone within the city. No further determination is required by the development services director or city council regarding such uses at any location within the city. This provision is declarative of existing law in that such uses have never been interpreted to be allowed in the city and this title has not made provision for these uses since the adoption of the Compassionate Use Act by the voters of California in 1996. In November 2012, the voters of the city rejected Propositions "Q" and "T," which would have allowed such uses. Said rejection of these measures is evidence of the intent of the voters to continue the prohibition of marijuana dispensaries or marijuana collectives. (Ord. 434 § 2, 2015; Ord. 426 § 2, 2014; Ord. 386 § 3, 2009).

Thank you,

Miranda Evans

Assistant Planner

City of Lemon Grove

Development Services Department

3232 Main Street

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mevans@lemongrove.ca.gov

www.lemongrove.ca.gov

From: Tim M [mailto:tim@cityredev.com]
Sent: Wednesday, July 13, 2016 7:06 PM
To: Miranda Evans
Cc: David DeVries; Paolo Romero; Malik Tamimi
Subject: Re: Fw: RE: 2545 Crestline Drive

Miranda,

Thank you for the response, no disrespect is meant here, but please re-read my previous email and review the attachments again in regard to Independent Living (I have attached again). There is a detailed description of this type of living provided here (see "Distinctions among housing types_06_-16-14" & "ILA_LegalHandout06-18-14" attached files). There is no "CA Residential Care License" required for Independent Living, i.e. individuals living together as a family (see "Distinctions among housing types_06_-16-14" attached file). You may have misinterpreted that there are "disabled seniors" living there requiring state licensing, however these people which we nor the City of Lemon Grove can discriminate against are living independently, do not need medication oversight in the home, & are able to function without supervision (see "IL FAQs ILA" attached file). There is no "care" or "supervised care" being provided. We are very aware of CA State Licensed facilities through "CA Community Care Licensing" and manage both types, we assure you "2545 Crestline Dr" is not a licensed facility nor is required to be per CA Law (see "ILA_LegalHandout06-18-14" attached file). Independent Living is no different than how your or my family lives, please see "CA Supreme Court ruling" attached. The County of San Diego actually supports this type of living and funds CHIP "Community Health Improvement Partners" to promote it. We do feel that the City of Lemon Grove may be overstepping their bounds slightly by digging into these peoples personal abilities as citizens and how they may live within the community. You may or may not agree with the mission we have in helping these people which is completely understandable, but I have to assure you that this is completely legal or we would not be trying to waste your time our ours (Please see attached files). In order to avoid more costs with our attorneys and yours along with fees, as you have requested a substantial amount of building changes to be done (such as add a garage) as I said before we are more interested in helping people, please take this to whoever you need (Supervisor, Manager, City Attorney, etc) for exemption to your accusation of a group home, so that we may comply with all your building permit requests. We are confident they will review the attached information and agree, as I said this is not the first City to make an assumption as to the type of living going on in our home.

Attachment F

Please Miranda, as it is our intention to comply with all building an municipal codes with the City of Lemon Grove and get this resolved as soon as possible. We due appreciate your due diligence for the City of Lemon Grove and look forward to being a good neighbor & helping the homeless people of Lemon Grove.

thanks,

Tim

City Redevelopment, LLC

858-635-5549 x143

On Thu, Jun 30, 2016 at 6:45 PM, Miranda Evans <mevans@lemongrove.ca.gov> wrote:

Tim,

Thank you for your email. Due to the information you have shared, please submit a copy of your CA Residential Care License for City staff's review. Please also provide a detailed description of the use of the property with substantial supporting evidence. Is supervised care provided? Once submitted in full, we will review for consideration.

Thank you,

Miranda Evans

Assistant Planner

City of Lemon Grove

Development Services Department

3232 Main Street

Lemon Grove, CA 91945

(619) 825-3813 phone

(619) 825-3818 fax

mevans@lemongrove.ca.gov

www.lemongrove.ca.gov

From: Tim M [mailto:tim@cityredev.com]
Sent: Wednesday, June 29, 2016 4:55 PM

To: Miranda Evans
Cc: David DeVries; Paolo Romero; Malik Tamimi
Subject: Fwd: Fw: RE: 2545 Crestline Drive

Miranda,

In addressing your letter dated June 23, 2016 (attached) and your response to Abbas Keshavarzi on June 28th, 2016 (in this email chain), we have to say we are a little "shocked" being that we have been in communication with your staff and Paolo Romero since the very beginning of when this violation took place. We would have to expect something like this from someone who was not in constant communication and not willing to work with the City of Lemon Grove on correcting the problem, which is not our intention at all. First you state, "there is a history of violations with the subject property" when the entire time it has been an unpermitted addition which we have been working to correct with several roadblocks along the way. In addition to have $14,800 in violations when as Paolo Romero stated right in front of you today in your office that we had a lot line adjustment claim through the title insurance company which had to be resolved before we could even submit the plans that had been prepared for some time and your office had reviewed previously, just seams a little excessive, unreasonable, and just plain unproductive in the matter with a homeowner who is trying to resolve the issue with the City. After speaking with Paulo, Patt, and other staff members who had seen the plans previously we were advised to just submit he plans w/o messing with the lot line adjustment as this would take 6-12 months to resolve in itself. So at this point on June 6th after your staff had identified some corrections several times on office visits by Mr Keshavarzi we submitted the plans. We understand you are just doing your job and may be new to this case, but want you to understand the entire history as it does not seam like it has been fully explained by your staff to you. In the future we will try to document everything via email communication as most of the previous communication was from multiple office visits and phone conversations with your staff of the City of Lemon Grove.

So now we come to another "road block" in your recent letter classifying 2545 Crestline Dr as a "boarding house?" We are not sure how you derived this information, but can assure you we are not a "boarding house." Mr Keshavarzi was explained that you obtained a lease from someone and it said meals were provided and this was the reason the residence would now be considered a boarding house? I would have to consult our attorney, but do not think donated food and residents cooking and eating together would be classified as a boarding home under CA law. In addition none of our leases have food provided in them as of early this year? Basically there are low income individual & disabled seniors living as a family in this residence and the state of CA allows this without any type of Special or Conditional use permit in any residential neighborhood according to our lawyer and the ILA (Independent Living Association). There is no law on the number of people to a particular residence in any residential neighborhood as you know and is not enforceable in any city in the state of CA. I was also told by our attorney, that with some of the people being disabled at the residence that this may also be a "Fair Housing" issue on discrimination where as the City of Lemon Grove could lose Fair Housing funding from the State and Federal governments if they took an incorrect action. Please see attached documents and submit to your supervisor, manager, and City Attorney for exemption of the non compatible with the General Plan Land Use Designation or Zoning District and any Conditional Use permit so we can get the original violation of an unpermitted addition corrected for you.

In addition you state that we have to convert the previously submitted plans now to 5 bedrooms (original house)vs 14 bedrooms and the addition can be a living room? I'm not quite clear on this as any amount of bedrooms is allowed anywhere within the State of CA,

Attachment F

many homes with in the City of Lemon Grove have more than 5 bedrooms? The code you gave to Mr Keshavari verbally also does not exist in the CA Residential Code? Or this is because of the City of Lemon Grove classifying the house as a group home which would consist of 5 or more persons? Please provide clarity with documentation of the limitation you are proposing of 5 bedrooms or less, or allow us to continue with the permitting process with the current plans submitted with the City of Lemon Grove. Please also understand that this house has been this way for 50 years other than the addition in the back which is the recent code violation. We understand that it is now our responsibility and being the new owner have to comply with all applicable laws, but please work with us as we do not want to displace disabled seniors living there currently as a family that would otherwise be living on the streets of Lemon Grove.

So either the case, we want to be in compliance with the City of Lemon Grove in any way possible and want to be a good neighbor. We are more interested in helping people rather than making any nuisances with any Cities. We understand that your job is very tedious, sometimes unpleasant, and you are very busy, so we want to make this as easy as possible for us and the code compliance office. Just understand that a simple addition permit has now become very complicated.

Thank you for your time and consideration. We look forward to completing the addition permits and keeping people off the streets of Lemon Grove.

Please advise after the City Attorney has reviewed the attached documents and we are able to get these plans approved so we can start the correction process.

Tim

City Redevelopment, LLC

858-635-5549 x143

--------- Forwarded message ---------

From: **Abbas Keshavarzi** <keshavarziabas@sbcglobal.net>
Date: Tue, Jun 28, 2016 at 3:36 PM
Subject: Fw: RE: 2545 Crestline Drive
To: Tim H

--- On Tue, 6/28/16, Miranda Evans <mevans@lemongrove.ca.gov> wrote:

> From: Miranda Evans <mevans@lemongrove.ca.gov>
> Subject: RE: 2545 Crestline Drive
> To: "'Abbas Keshavarzi'" <keshavarziabas@sbcglobal.net>
> Date: Tuesday, June 28, 2016, 3:29 PM
> Hi Abbas,
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> and continued efforts to comply with City direction. The

> City issued the first fine December 14, 2015 and shortly
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> to acknowledge the issue and informed City staff that plans
> would be submitted, which demonstrates the property owner
> has been aware of the situation. Staff issued the following
> citations after plans were not submitted with a daily fine
> of $1000. Also, as you can see from the copies of all the
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> family room or other area compatible with the residential
> character and requirements of the Residential Low/Medium
> Zoning District. If the addition is demolished, then the
> City will issue a refund of your plan check fee (up to 80%).
> Failure to cooperate with this directive in a timely manner
> will result in additional code enforcement actions.
>
> Best regards,
>

> Miranda Evans
> Assistant Planner
> City of Lemon
> Grove
> Development Services Department
> 3232 Main Street
> Lemon Grove,
> CA 91945
> (619) 825-3813 phone
> (619) 825-3818 fax
> mevans@lemongrove.ca.gov
> www.lemongrove.ca.gov
>
>

> -----Original Message-----
> From: Abbas Keshavarzi [mailto:keshavarziabas@sbcglobal.net]
>
> Sent: Monday, June 27, 2016 2:16 PM
> To: Miranda Evans
> Subject: Re:
> 2545 Crestline Drive
>
> Hello
> Miranda
> After recieving the initial code
> enforcment notice, the owner of this property hired me to
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Attachment F

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> our intention since day 1 to cooperate and be a good
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> Grove."
>
> Best
> Regards
> Abas Keshavarzi
> (858) 603-3080----------
> On Thu, 6/23/16, Miranda Evans <mevans@lemongrove.ca.gov>
> wrote:
>

> Subject: 2545
> Crestline Drive
> To: "'keshavarziabas@sbcglobal.net'"
> < keshavarziabas@sbcglobal.net>
> Cc: "David DeVries" <ddevries@lemongrove.ca.gov>
> Date: Thursday, June 23, 2016, 5:56 PM
>
>
>
>
>
>
>
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>
> Mr. Keshavarzi,
>
> Please review the attached
>

> letter regarding the plans you submitted on June 6, 2016.
> A copy of this notice has also been mailed to your address
> on file with the City and to the property owner's
> address. Please forward this email to the
>
> property owner, as we do not have record of their email
> address, and let me know of any questions you may have.
> Thank you for your attention to this
> matter.
>
>
> Sincerely,
>
> Miranda Evans

CITY DEVELOPMENT

Tim H <tim@cityredev.com>

Fwd: Fw: RE: 2545 Crestline Drive

Tim H <tim@cityredev.com> Tue, Aug 30, 2016 at 2:25 PM
Draft To: David DeVries <ddevries@lemongrove.ca.gov>
Cc: Miranda Evans <mevans@lemongrove.ca.gov>, "jturner@jturnerlawgroup.com" <jturner@jturnerlawgroup.com>, Lydia Romero <lromero@lemongrove.ca.gov>

Thanks David for the response. I am curious as to what you "do not" agree with in statements/assumptions discussed in the previous email to you? Please clarify these so that I can make sure we are on the same page.

I am saddened by the fact that we are not able to review the staff report that will be provided by your staff to city counsel on Thursday September 1st PRIOR to the city council reviewing it. Being its our appeal of the Development Service Directors decision, I would hope that we would be able to see what is being prepared prior to it being handed to the ultimate decision makers.

Again we look forward to cooperating with the City of Lemon Grove and moving past this so we can focus on helping the less fortunate.

thanks,
Tim
City redevelopment, LLC
858-635-5549 x143

On Fri, Aug 26, 2016 at 8:19 AM, David DeVries <ddevries@lemongrove.ca.gov> wrote:

> Thanks Tim, the appropriate forum to discuss your position will be at the City Council meeting. I do not agree with all of your statements/assumptions discussed herein. Your initial email with the appeal application included the attachments that will be included as attachments in the City Council staff report. If you would like to include additional items, please forward them to me by 5pm on Tuesday August 30th. The staff report is prepared in response to the public hearing appeal you requested and will be provided to you next Thursday, when it is delivered to the City Council and available to the public. I believe I have already answered your questions discussed below.
>
> Thanks,
>
> David B. De Vries, AICP
>
> Development Services Director
>
> City of Lemon Grove
>
> Development Services Department
>
> 3232 Main St.
>
> Lemon Grove, CA 91945

Attachment F

(619) 825-3812 phone

(619) 825-3818 fax

ddevries@lemongrove.ca.gov

www.lemongrove.ca.gov

From: Tim M [mailto:tim@cityredev.com]
Sent: Wednesday, August 24, 2016 6:24 PM
To: David DeVries <ddevries@lemongrove.ca.gov>
Cc: Paolo Romero <promero@lemongrove.ca.gov>; Miranda Evans <mevans@lemongrove.ca.gov>; Patti Peterson <ppeterson@lemongrove.ca.gov>; Lydia Romero <lromero@lemongrove.ca.gov>; jturner@jturnerlawgroup.com
Subject: Re: Fw: RE: 2545 Crestline Drive

David,

It was a pleasure speaking with you Monday 8/22/16, as always you were detailed and very knowledgeable. You are correct that the fee's have been reasonable thus far other than the $14,800 in code enforcement fines while cooperating with the City throughout this process. Thank you for the clarification of the Development Services Directors official stance as classifying our home as a "Boarding House" rather than "Group Home" or "Licensed Facility" Miranda discussed verbally over the phone on with me on 7/26/16. Being that you stated, "the City of Lemon Grove would not be able to provide us with specific reasoning or proof leading to their decision of classifying us as a Boarding House" other than they assumed meals were provided occasionally at first, followed later that certain rooms were rented individually; we would really like to review what is being sent to all of our neighbors for our appeal of the Development Services Director decision prior to it being mailed if possible? We understand this is procedural for Appeals based on the LGMC you sent us, but were unaware that the whole neighborhood would be notified based off of the Development Services Director's decision and an appeal process.

After our conversation I also understand that an appeal is the only way to change the decision of the Development Services Director so we have consulted jturnerlawgroup, apc and Jason Turner (ILA council to Community Health Improvement Partners funded by the county of San Diego) and he will be writing you a letter to hopefully clarify this type of Independent Living as a family with the hopeful intention of avoiding an appeal to City Counsel all together. If this decision based off the Development Services Directors decision is granted it would change the trajectory of all the Independent Livings (which you acknowledged there are in the City) within the entire city of Lemon Grove as they would now be classified "Boarding Houses" and according to the CA Supreme Court this would not be allowed based on the 1980 ruling "City of Santa Barbara v Adamson."

In addition you stated that a staff report will be available September 1st, and we would like to view a copy of this before it is sent to City Counsel based on it being our appeal and the package that was sent over to Miranda Evans on July 27th to make sure all of our documentation sent is included, in particular all attachments if possible?

Again, sorry to bother you on this and we have every intention of fully cooperating with the City of Lemon Grove as the last thing we want is these individuals displaced back to the streets of Lemon Grove with what we feel is an incorrect classification of our home.

We look forward to resolving this so that we may permit the original addition in question and convert the garage back the way it was originally built by approving the plans Mr Keshavarzi previously submitted after changes on June 6th after multiple revisions by the city of Lemon Grove from previous visits by Mr Keshavarzi. We pride ourselves on being a good neighbor and helping the less fortunate.

thanks,

Tim

City Redevelopment, LLC

858-635-5549 x143

PS: All original attachments attached again for your reference.

On Mon, Aug 22, 2016 at 6:40 PM, David DeVries <ddevries@lemongrove.ca.gov> wrote:

> Hi Tim, you can review the public notice Thursday it is posted in the paper and delivered to the property owners. Please email Patti at noon Thursday for a copy if you haven't received it already.
>
> Thanks,
>
> David B. De Vries, AICP
>
> Development Services Director
>
> City of Lemon Grove
>
> Development Services Department
>
> 3232 Main St.
>
> Lemon Grove, CA 91945
>
> (619) 825-3812 phone
>
> (619) 825-3818 fax
>
> ddevries@lemongrove.ca.gov
>
> www.lemongrove.ca.gov

Attachment F

CITY DEVELOPMENT Institute

Tim H <tim@cityredev.com>

Fwd: Fw: RE: 2545 Crestline Drive

Tim H <tim@cityredev.com> Wed, Jul 27, 2016 at 3:56 PM
Draft

--- On Tue, 6/28/16, Miranda Evans <mevans@lemongrove.ca.gov> wrote:

> From: Miranda Evans <mevans@lemongrove.ca.gov>
> Subject: RE: 2545 Crestline Drive
> To: "'Abbas Keshavarzi'" <keshavarziabas@sbcglobal.net>
> Date: Tuesday, June 28, 2016, 3:29 PM
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--

Tim Hutchison
City Redevelopment, LLC

CITY DEVELOPMENT

Tim H <tim@cityredev.com>

Fwd: Fw: RE: 2545 Crestline Drive

Tim M <tim@cityredev.com> Wed, Jun 29, 2016 at 4:55 PM
To: Miranda Evans <mevans@lemongrove.ca.gov>
Cc: ddevries@lemongrove.ca.gov, promero@lemongrove.ca.gov, mtamimi@lemongrove.ca.gov

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City Redevelopment, LLC
858-635-5549 x143

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> citations after plans were not submitted with a daily fine
> of $1000. Also, as you can see from the copies of all the
> citations issued, there were periods where there were no
> citations issued because City staff was notified that plans
> would be submitted. Please note that the $14, 800 fine
> amount does not include late payment and interest penalties.
>
>
> Per letter sent last
> Thursday, the direction moving forward is to revise your
> plans to reflect the approved conditions on site (5 bedrooms
> or less). The addition may be demolished or permitted as a
> family room or other area compatible with the residential

> character and requirements of the Residential Low/Medium
> Zoning District. If the addition is demolished, then the
> City will issue a refund of your plan check fee (up to 80%).
> Failure to cooperate with this directive in a timely manner
> will result in additional code enforcement actions.
>
> Best regards,
>
> Miranda Evans
> Assistant Planner
> City of Lemon
> Grove
> Development Services Department
> 3232 Main Street
> Lemon Grove,
> CA 91945
> (619) 825-3813 phone
> (619) 825-3818 fax
> mevans@lemongrove.ca.gov
> www.lemongrove.ca.gov
>
>
> -----Original Message-----
> From: Abbas Keshavarzi [mailto:keshavarziabas@sbcglobal.net]
>
> Sent: Monday, June 27, 2016 2:16 PM
> To: Miranda Evans
> Subject: Re:
> 2545 Crestline Drive
>
> Hello
> Miranda
> After recieving the initial code
> enforcment notice, the owner of this property hired me to
> draw an as-built plan and apply to obtain a building permit
> for non permitted works that have been done. We have been in
> contact with the city since day 1 and even had Ed Carlson
> from their office come into your office and the staff
> reassured us there would be no fines as we came in right
> after the letter was served. We are working with the City
> and I was in contact with Paulo, Patt and other staff
> members since then to make it work. We have had a lot of
> delays out of our control, but after several meetings and
> conversations I submitted the project on June 6th, now you
> surprised us with this letter and $14800 fine, this is not
> fair and the owner can not even aford this, building codes
> that you referenced don't say any thing regarding fines.
> Building Code indicates permit is required and this is
> exactly what we are trying to do. This building is not a
> boardinghouse facility, residents are independent and living
> there as a large family. Please help us so that we can get
> the situation rectified with the City of Lemon Grove, it is
> our intention since day 1 to cooperate and be a good
> neighbor and help keep people off the streets of Lemon
> Grove."
>
> Best
> Regards
> Abas Keshavarzi

Attachment F

> (858) 603-3080----------
> On Thu, 6/23/16, Miranda Evans <mevans@lemongrove.ca.gov>
> wrote:
>
> Subject: 2545
> Crestline Drive
> To: "'keshavarziabas@sbcglobal.net'"
> < keshavarziabas@sbcglobal.net>
> Cc: "David DeVries" <ddevries@lemongrove.ca.gov>
> Date: Thursday, June 23, 2016, 5:56 PM
>
>
>
>
>
>
>
>
>
>
> Mr. Keshavarzi,
>
> Please review the attached
>
> letter regarding the plans you submitted on June 6, 2016.
> A copy of this notice has also been mailed to your address
> on file with the City and to the property owner's
> address. Please forward this email to the
>
> property owner, as we do not have record of their email
> address, and let me know of any questions you may have.
> Thank you for your attention to this
> matter.
>
>
> Sincerely,
>
> Miranda Evans
> Assistant
> Planner
> City of Lemon Grove
> Development Services
>
> Department
> 3232 Main Street
> Lemon Grove, CA 91945
> (619)
> 825-3813 phone
> (619) 825-3818 fax
> mevans@lemongrove.ca.gov
> www.lemongrove.ca.gov
>

Tim Hutchison
City Redevelopment, LLC
10606 Camino Ruiz, Suite #8130
San Diego, CA 92126
thutchison@cityredev.com
www.cityredev.com
p: (858) 635-5549 x213
f: (866) 523-3271

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6 attachments

3446_001.pdf
1932K

2545 Crestline Drive, B16-000-0344.pdf
69K

Distinctions among housing types_06-16-14 (2).pdf
90K

Distinctions among housing types_06-16-14 (2).pdf
90K

City of Santa Barbara v. Adamson, 610 P. 2d 436 - Cal Supreme Court 1980.xps
3380K

City of Santa Barbara vs Adamson unrealated persons living together as family.xps
1477K

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Independent Living Association
by Community Health Improvement Partners

FACT SHEET

THREE LEGAL PROTECTIONS CALIFORNIA LOCAL GOVERNMENTS AND OWNERS OF INDEPENDENT LIVING HOMES FOR THE MENTALLY ILL NEED TO KNOW.

June 2014

1. Definition of Family:
Why independent living homes may locate in residential zones in California:

In a 1980 California Supreme Court decision, *City of Santa Barbara v. Adamson,* the court ruled, based on privacy rights, that definitions of "family" for purposes of zoning cannot distinguish between related and unrelated individuals. Therefore, local governments cannot limit the number of unrelated adults that may reside together functioning as a family if they do not limit the number of related persons. However, several local governments still attempt to use or enforce an illegal definition of family.

Following are examples of legal definitions of family local governments can use:

Example 1: One or more persons living together as single house-keeping unit.

Example 2: One or more persons, related or unrelated, living together as a single integrated household in a dwelling unit.

Independent Living homes for the mentally ill function as a family. They do not provide care, treatment, individual or group counseling, case management, medication management, or treatment planning. They do not supervise daily activities. Therefore, Independent Living homes are not subject to state licensure requirements. What they do provide is a supportive family-like home setting for unrelated adults.

> ". . . local governments cannot limit the number of unrelated adults that may reside together functioning as a family …"

Typical characteristics of a family include:

- The formation of close emotional and psychological bonds.
- Commitment to each other and emotional support.
- Rotation of chores.
- Eat evening meals together.
- Socialize together and engage in shared activities of their choosing.

Families may employ staff to support household functions. It is not uncommon for family members to go to outpatient medical services or receive home health services. They may hold social meetings in their homes. Residents of these households have equal access to the entire dwelling. Because these homes are neither boarding houses nor commercial enterprises they should not be treated as such by local governments.

2. Types of group homes the California Health & Safety Code "six and under" provisions do and do not apply to

Many local governments are not aware of the regulatory distinctions between group homes required to be state licensed and those that are not. Facilities that are required to be licensed are those that provide care, rehabilitation and other forms of treatment, client supervision and medication dispensing or management.

Originally developed for the Solutions for Treatment Expansions Project funded by The California Endowment and developed and managed by the Global Institute for Public Strategies.
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California law exempts licensed residential treatment or board and care facilities with six or fewer people from being subject to local zoning and land use regulations *(Health & Safety Code Section 1566.3 for Community Care facilities)*. These sections of the Health & Safety Code only apply to licensed facilities and never apply to residences that are not required to be state licensed.

Unfortunately, many local governments erroneously apply the "six and under" provision to Independent Living residences, inappropriately citing them for code violations requiring that the residence must have six or fewer residents, or have a conditional use permit (CUP), or some other type of administrative use permit, or must become state licensed, none of which apply.

Local governments cannot require zoning or land use permits or restrictions for a residence that is not required to be licensed if the restriction is not imposed on all residences in the jurisdiction.

If such an ordinance is enacted by a jurisdiction it should be free of discrimination as defined by fair housing laws.

3. How fair housing laws apply to zoning and land use for housing for persons with disabilities

The 1988 federal Fair Housing Amendments Act (FHAA) defined both disability and discrimination regarding housing rights.

Housing includes licensed residential treatment programs as well as Independent Living homes for the mentally ill and other persons with disabilities when they reside as a family for an extended period as opposed to an overnight or "hotel" situation.

> "... many local governments erroneously apply the 'six & under' provision to independent living residences inappropriately citing them for code violations."

> "... target independent living homes for persons with disabilities when it is more about "who" is living in homes rather than "what" types of homes they are."

Disability, according to fair housing laws, includes but is not limited to the mentally ill and those addicted to alcohol and other drugs.

3 types of housing discrimination are defined by the FHAA:

I. Discriminatory intent targeting protected classes of people
II. Discriminatory impact that doesn't facially single out a protected class or classes but its impact has a disproportionally restrictive impact on them.
III. Failure to provide reasonable accommodation or flexibility in zoning and land use decisions impacting housing for persons with disabilities.

The following are two examples of situations in which local governments are at risk for violating fair housing laws:

- When restrictive policies and regulations are based on conjecture, not evidence. For instance, a local government may state that "these homes create neighborhood impairment," but offer no evidence to support that supposition, such as jurisdiction-wide law enforcement statistics that indicate that these homes stand out as threats to community health and safety.
- When regulations or enforcement specifically target Independent Living homes for persons with disabilities when it is more about "who" is living in homes rather than "what" types of homes they are.

To further understand how fair housing law applies to Independent Living for persons with disabilities as well as licensed residential treatment, both housing providers and local governments are encouraged to consult with fair housing professionals regarding: compliance with state and federal fair housing laws and local zoning and land use policy implementation and enforcement

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ila Independent Living Association
by Community Health Improvement Partners

Independent Livings FAQs

What is an Independent Living?
The term Independent Living is used to describe a wide array of housing for many different types of residents. Independent Livings belonging to the Independent Living Association (ILA) refers to *privately-owned homes or complexes that provide housing for adults with mental illness and other disabling health conditions. They serve residents that do not need medication oversight in the home, are able to function without supervision, and live independently.*

Key Elements of Independent Livings:

- Independent Livings are homes – they don't require any licensing.
- Residents are tenants and governed by landlord/tenant laws.
- Independent Livings are not regulated because they are not licensed facilities.

Independent Livings facilitate a group of adults living together and provide a safe affordable home for thousands of people in San Diego County. Each home is as individual as the people who live in them.

What is the "six and under" rule and how does it apply to Independent Livings?

- Independent Livings do not require any licensing as they do not carry out any of the functions of a licensed home (e.g. a Board and Care or Residential Care Facility, etc.).
- Residents live in the home independently and are not provided with "care and supervision"
- NOTE: In California, State law allows for any licensed home (such as a Board and Care or Residential Care Facility) with six or fewer residents to exist "by right", and cannot be subject to specific zoning restrictions from a city (see information below regarding zoning). If a licensed home has seven or more residents, then most cities will require licensed residences (such as a Board and Care or Residential Care Facility) to obtain a conditional use permit (CUP), which allows for specifically defined activities on a property (e.g. to provide licensed care and supervision to residents).

Contact Us: 858-609-7972 info@ilasd.org www.ilasd.org

Independent Living Association
by Community Health Improvement Partners

DISTINCTIONS AMONG CALIFORNIA GROUP HOME TYPES

Distinctions	Licensed Residential facilities (e.g. Board & Care; Residential Care Facility)[1]	Independent Living Homes[2]
TYPE OF SERVICE PROVIDED	Non- medical treatment, Supervision and Care Non-medical services: mentally ill, seniors, developmentally disabled, alcohol and drug recovery programs	Primary Residence No services. Persons who are not in need of treatment, supervision or other types of care. (Can participate in O/P programs)
# OF HOMES in San Diego County	1,200+	Unknown
REQUIRED TO BE LICENSED?	Yes	No
ZONING REGULATIONS FOR 6 OR FEWER PERSONS	None	None
ZONING REGULATIONS FOR 7 OR MORE PERSONS	No state requirement for conditional use permit but many local governments require them	None—classified as a "family" (unrelated adults) living in a single family unit (*City of Santa Barbara v. Adamson*)
ON-SITE MANAGEMENT & STAFF	Yes	Not required
MANAGEMENT & STAFF RESPONSIBILITIES	According to licensing requirements: Ensure property and program compliance	Determined by owner
FIND A FACILITY	State of CA Community Care Licensing Division and Dept. Alcohol and Drugs (online data bases)	No required identification or listing (ILA does have a online database of IL's at ilasd.org)
REGULATORY AUTHORITY	State Department of Social Services (Community Care and State Dept. of Alcohol and Drugs)	Tenant Landlord laws
REPORT PROBLEMS TO:	1. Facility If unsatisfactory response then, 2. Community Care Licensing or State Dept. of Alcohol and Drugs	• Property owner • Code enforcement • Housing & Community Development • ILA Complaint Process regarding ILA members
CONSEQUENCES OF NUISANCE	Potential loss of license	County/municipal fines, civil suit

[1] Licensed Residential facilities for mentally ill, alcohol and drug addicted, seniors and other protected populations by Fair Housing laws
[2] Independent Living Homes for Mentally Ill, and others deemed "disabled" or "protected" by Fair Housing laws

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City of Santa Barbara v. Adamson: An Associational Right of Privacy and the End of Family Zones

Thomas H. Kagy

City of Santa Barbara v. Adamson: An Associational Right of Privacy and the End of Family Zones

In *City of Santa Barbara v. Adamson*,[1] the California Supreme Court held that a city zoning ordinance that limited to five the number of unrelated persons who could live together in a single dwelling in certain family zones violated the right of privacy expressly guaranteed by the California Constitution. The decision is the first California case to interpret the state's right of privacy more broadly than previous understandings of either the state right itself or the federal constitutional right of privacy, and it signals the end of land use regulation that specifically attempts to maintain family environments.

This Note argues that the *Adamson* decision is an unsound expansion of the right of privacy. Part I briefly sets forth the facts of the case and the supreme court's opinion. Part II analyzes the court's treatment of the privacy issue and suggests that the California right of privacy should not have been interpreted more expansively than the state's voters, in approving the addition of the right to the state constitution, intended it to be. Rather, sound principles of constitutional construction require that the California right be interpreted as being analogous to the rights protected by the fourth amendment. The analysis concludes with a consideration of the consequences of the *Adamson* decision on future efforts at maintaining family zones.

I
THE CASE

A. The Facts

The City of Santa Barbara enacted a zoning ordinance that restricted the uses to which properties located within particular designated zones could be put. Relevant to this case were the zones designated as one-family, two-family, and multiple-family residence zones. Family was defined as either " '[a]n individual, or two . . . or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit . . . . [or a] group of not to exceed five . . . persons, excluding servants, living together as a single housekeeping unit in a dwelling unit.' "[2] Among the

1. 27 Cal. 3d 123, 610 P.2d 436, 164 Cal. Rptr. 539 (1980) (Newman, J.) (4-3 decision).
2. *Id.* at 127, 610 P.2d at 437-38, 164 Cal. Rptr. at 540-41 (quoting SANTA BARBARA, CAL.,

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stated purposes for the establishment of the one-family residence zones was " 'to develop and sustain a suitable environment for family life where children are members of most families.' "[3]

Beverly Adamson purchased a large ten-bedroom, six-bathroom house located in a single-family zone and sought persons to share it. Two months later, when the city sought an injunction prohibiting violation of the ordinance, twelve unrelated adults occupied the house. The house provided ample space for its occupants; there was even on-premise parking for twelve cars.[4]

The occupants considered themselves to be like a family. In two months, they had become a "close group with social, economic, and psychological commitments to each other."[5] They rotated chores, ate meals together, and shared expenses. Three members of the group, including Adamson, contributed significant sums to improving the house and defending against the city's suit. The group took a trip to Mexico and enjoyed other recreational activities together.[6] Following warnings, the city sought to enjoin the violation of the ordinance. The trial court issued a preliminary injunction prohibiting the twelve from continuing to violate the ordinance by living together in any family-residence zone. Appeal was taken to the California Supreme Court, which reversed.

B. The Opinion

First, the court noted the extent of the restrictions on the twelve's ability to live together in Santa Barbara. Under the ordinance, there were only two serious possibilities that would allow them to live together. They might obtain a conditional use permit to operate a boarding house in another zone of the city, or they could apply for a variance from the ordinance's strictures.[7]

The court then briefly analyzed the California right of privacy.[8] That right was added to the California Constitution by the state's vot-

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MUNICIPAL ORDINANCE § 28.04.230). For a list of the 37 California cities with zoning ordinances containing restrictions identical to those challenged in this case, see 27 Cal. 3d at 138 n.1, 610 P.2d at 444 n.1, 164 Cal. Rptr. at 547 n.1 (Manuel, J., dissenting).

3. 27 Cal. 3d at 132, 610 P.2d at 441, 164 Cal. Rptr. at 544 (quoting SANTA BARBARA, CAL., MUNICIPAL ORDINANCE § 28.15.005). The stated intent for establishing the two-family and multiple-family zones was similar. *See* 27 Cal.3d at 131, 610 P.2d at 440, 164 Cal. Rptr. at 543.

4. 27 Cal.3d at 127-28, 610 P.2d at 438, 164 Cal. Rptr. at 541. The twelve persons included "a business woman, a graduate biochemistry student, a tractor-business operator, a real estate woman, a lawyer, and others." *Id.* at 127, 610 P.2d at 438, 164 Cal. Rptr. at 541.

5. *Id.*

6. *Id.*

7. *Id.* at 129, 610 P.2d at 439, 164 Cal. Rptr. at 542. Less seriously, they could have lived together as masters and servants. *See id.*

8. CAL. CONST. art. I, § 1, states: "All people are by nature free and independent and have

ers in the 1972 election. The court quoted the following excerpt from the ballot pamphlet argument made by the proponents of the amendment:

> " 'The right of privacy is the right to be left alone. *It is a fundamental and compelling interest*. It protects our *homes*, our *families*, our thoughts, our emotions, our expressions, our personalities, our *freedom of communion*, and our *freedom to associate with the people we choose* . . . . [¶] The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. *This right should be abridged only when there is a compelling public need* . . . .' "[9]

The court concluded that the ballot argument evidenced the voters' intent to guarantee a right of privacy applicable to one's family and one's home.

The court stated that any abridgment of the privacy right must be justified by a "compelling [public] interest."[10] Although Justice Newman's majority opinion fails to make explicit the analytical framework employed by the court, this reference to the need to show a compelling justification for the restriction impliedly suggests that the Santa Barbara ordinance was subjected to a strict scrutiny test triggered by the infringement of the fundamental right of privacy.[11]

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inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

9. 27 Cal. 3d at 130, 610 P.2d at 439, 164 Cal. Rptr. at 542 (emphasis added by the *Adamson* court) (quoting White v. Davis, 13 Cal. 3d 757, 774-75, 533 P.2d 222, 233-34, 120 Cal. Rptr. 94, 105-06 (1975) (quoting the official election brochure)).

CAL. ELEC. CODE §§ 3526-3529, 3563-3567 (West 1977) provide for the submission and selection of arguments by proponents and opponents of state measures for printing in ballot pamphlets. CAL. ELEC. CODE §§ 3570, 3571 (West 1977) regulate the content of ballot pamphlets.

10. 27 Cal. 3d at 131, 610 P.2d at 440, 164 Cal. Rptr. at 543.

11. This conclusion is based on the fact that the bulk of the opinion is devoted to a discussion of the privacy right, and on the fact that the court never makes reference to either the California equal protection clause, CAL. CONST. art. I, § 7, or the federal equal protection clause, U.S. CONST. amend. XIV, § 1. Thus, at least on the surface, this case appears to be grounded in the infringement of the fundamental right of privacy. *Cf.* Committee to Defend Reproductive Rights v. Myers, 29 Cal. 3d 252, 263, 625 P.2d 779, 784, 172 Cal. Rptr. 866, 871 (1981) (citing *Adamson* for its privacy holding). Traditionally, heightened scrutiny has been invoked when governmental action burdens the exercise of fundamental rights such as privacy. *See, e.g.*, Roe v. Wade, 410 U.S. 113, 155 (1973); People v. Belous, 71 Cal. 2d 954, 964, 458 P.2d 194, 200, 80 Cal. Rptr. 354, 360 (1969).

However, the court's approach in *Adamson* might also be construed as an equal protection analysis. Strict scrutiny will also be invoked in an equal protection setting when governmental action allegedly burdens the exercise of a fundamental right in a way that affects one class of people differently than another, allegedly equal class. *See, e.g.*, Hawkins v. Superior Court, 22 Cal. 3d 584, 586 P.2d 916, 150 Cal. Rptr. 435 (1978). Given the nature of the complaint in *Adamson*, it is probably more accurate to say that the heightened scrutiny was triggered by an equal protection/fundamental rights approach rather than merely a fundamental rights analysis. Unfortunately, the court never articulates such an approach; what equal protection analysis exists in the opinion must be gleaned from scattered references to the differences in treatment accorded

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However, the court did not invalidate the ordinance for want of a legitimate compelling interest. The court did not question that Santa Barbara's interest in maintaining family zones is a sufficiently compelling interest to justify an abridgment of the privacy right.[12] Instead, it questioned whether the ordinance's restrictions "truly and substantially"[13] furthered the compelling interest. In doing so, the court addressed the specific ways in which the ordinance was to promote family environments, and decided that the ordinance was not necesary to accomplish those specific goals.

The court considered the relationship of the ordinance's restric-

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families and nonfamilies. *See* 27 Cal. 3d at 128, 133, 134, 610 P.2d at 438, 441-42, 442, 164 Cal. Rptr. 541, 544-45, 545.

Such references indicate that the court did not rely solely on the right of privacy to invalidate the Santa Barbara ordinance. Rather, the court looked at the distinction made between related families and unrelated households of more than five people and found it to be an unjustifiably harsh method of solving the social problems that detract from family environments. See note 16 and accompanying text *infra* for a discussion of California's treatment of arbitrary and unnecessary classifications. An inquiry into unjustified classifications parallels equal protection analysis, and may actually be equal protection analysis. *See, e.g.*, Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 456 P.2d 645, 79 Cal. Rptr. 77 (1969).

In one respect, it makes little difference in cases such as *Adamson* whether the analysis is equal protection or pure fundamental rights, since heightened scrutiny will probably be invoked in either case and the state forced to demonstrate a compelling interest in its restrictions. *Cf.* Committee to Defend Reproductive Rights v. Myers, 29 Cal.3d at 256 n.22, 625 P.2d at 793 n.22, 122 Cal. Rptr. at 880 n.22 (strict scrutiny triggered by infringement of fundamental right noted also to be appropriate for implicit equal protection issues; no separate analysis of the two issues deemed necessary).

However, muddling the two distinct issues together without explicitly noting their existence may cause problems in the longrun. For instance, if *Adamson* is purely a fundamental right of privacy case, then there may be no way to limit its holding to distinctions between related families and unrelated "families." *See* text accompanying note 74 *infra*. Such a holding could also have serious implications for land use planning generally:

> "Were a court to . . . hold that an inferred right of any group to live wherever it chooses might not be abridged without some compelling state interest, the law of zoning would be literally turned upside down; presumptions of validity would become presumptions of invalidity and traditional police powers of a state would be severely circumscribed."

Associated Home Builders, Inc. v. City of Livermore, 18 Cal. 3d 582, 603, 557 P.2d 473, 485, 135 Cal. Rptr. 41, 53 (1976) (quoting Comment, *Zoning, Communes and Equal Protection*, 1973 URB. L. ANN. 319, 324).

12. *See* 27 Cal. 3d at 131-32, 610 P.2d at 440-41, 164 Cal. Rptr. at 543-44. Upon stating that Santa Barbara must assert a compelling state interest, the court noted that the general intent of the ordinance to further the public health and welfare would "hardly justify the restrictions." *Id.* at 131, 610 P.2d at 440, 164 Cal. Rptr. at 543. The court then quoted the purpose behind setting up the one-family, two-family, and multiple-family zones, *i.e.*, preserving an appropriate environment for family life. The court did not discuss the sufficiency of this purpose as a justification for the restrictions before going on to ask whether the ordinance "truly and substantially" furthered that purpose. *Id.* at 131-32, 610 P.2d at 440-41, 164 Cal. Rptr. at 543-44. The inference may be drawn from this silence that the court acknowledges that maintaining a suitable environment for family life is a compelling state interest. *See also id.* at 128, 610 P.2d at 438, 164 Cal. Rptr. at 541 ("Valid laws can, of course, be written to help promote and protect values that family life enhances."); *id* at 133-34, 610 P.2d at 442, 164 Cal. Rptr. at 545 (referring to "the *legitimate* aim of maintaining a family style of living") (emphasis added).

13. *Id.* at 132, 610 P.2d at 441, 164 Cal. Rptr. at 544.

tions to the goals of achieving low population density and avoiding overcrowding. The court held that the ordinance did not further these goals directly enough because it did not limit the number of related residents who could live together, nor did it limit the number of servants who could live in one household.[14] Thus, overcrowded households would not be affected by the ordinance if they were composed of related people, whereas an uncrowded household of more than five unrelated people would nevertheless be illegal.

The court also found that the ordinance's "rule-of-five" was unrelated to prevention of noise, traffic or parking congestion, or any other activities or conditions that might detract from a family environment. The court stated that the assumption that a large group of unrelated persons would be more likely to cause any of these evils than an equally-sized related group did not " '[reflect] a universal truth.' "[15] Families can contribute to urban problems to the same extent as nonfamilies consisting of more than five unrelated people. Although the court did not say as much, it apparently viewed the distinction between families and unrelated groups of more than five people as an arbitrary one that did not rationally relate to the underlying purpose of the ordinance.[16]

The court further noted that any assumption that groups of unrelated persons made for an immoral environment for families with children would not justify the ordinance. Previous case law had held such an assumption impermissible.[17]

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14. *Id.*

15. *Id.* at 133, 610 P.2d at 441, 164 Cal. Rptr. at 544 (quoting City of Des Plaines v. Trottner, 34 Ill. 2d 432, 437, 216 N.E.2d 116, 119 (1966).

16. *Cf.* Hawkins v. Superior Court, 22 Cal. 3d 584, 592, 586 P.2d 916, 921, 150 Cal. Rptr. 435, 440 (1978) (under California's equal protection clause, CAL. CONST. art. I, § 7, the state has the burden of showing a compelling state interest justifying the classification and also that the classification is necessary to promote that compelling interest); People v. Belous, 71 Cal. 2d 954, 964, 458 P.2d 194, 200, 80 Cal. Rptr. 354, 360 (1969) (legislation impinging on constitutionally protected areas must be narrowly drawn and necessary to accomplish a permissible compelling policy); Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 580-81 & n.32, 456 P.2d 645, 655 & n.32, 79 Cal. Rptr. 77, 87 & n.32 (1969) (state cannot establish arbitrary classifications that bear no rational relation to the compelling state interest under the federal equal protection clause, U.S. CONST. amend. XIV, § 1). For a discussion of the court's analytical framework, see note 11 and accompanying text *supra*.

17. 27 Cal. 3d at 133, 610 P.2d at 441, 164 Cal. Rptr. at 544 (citing United States Dep't of Agric. v. Moreno, 413 U.S. 528, 534 n.7 (1973) and Atkisson v. Kern County Hous. Auth., 59 Cal. App. 3d 89, 97, 130 Cal. Rptr. 375, 380 (5th Dist. 1976)).

The court's concern that the family-like *Adamson* twelve were being kept out of their house because the city improperly considered such a living arrangement immoral seems misplaced. An illegitimate attempt to penalize unmarried couples relative to married couples was not demonstrated, since the ordinance did not penalize couples who were unmarried. The suggestion that Santa Barbara was attempting to prevent some immorality fails to take into account the fact that the city allowed up to five unrelated adults to live together. *See* text accompanying note 2 *supra*.

Finally, the court asserted that each of the ordinance's goals could be achieved by less restrictive means.[18] The court concluded that generally, "*zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users*."[19] Further suggestion as to the type of law that the court would approve is found in its discussion of the way the New Jersey Supreme Court has approached similar zoning ordinances. The court suggested that a single-family zone would cause no constitutional problems if a family were defined as " 'a reasonable number of persons who constitute a *bona fide* single house-keeping unit.' "[20] In a second case, the New Jersey Supreme Court stated that "a group bear[ing] the 'generic character of a family unit as a relatively permanent household,' . . . should be equally as entitled to occupy a single family dwelling as its biologically related neighbors."[21]

The court concluded its opinion by holding that neither the possibility that the twelve could obtain a conditional use permit to operate a boarding house in another part of the city nor the possibility that they might obtain a variance made the ordinance constitutional.[22]

II
EXPANSION OF THE RIGHT TO PRIVACY

The court's treatment of the right of privacy guaranteed by the California Constitution expands that right beyond the scope recognized in previous cases. The extent of the expansion is unclear, because the court articulated no limiting principle to be applied in future cases.

A. The Extent of the Expansion

1. Prior California Privacy Law

The constitutional amendment of 1972 that added privacy to the list of rights guaranteed by the California Constitution has had little

18. *E.g.*:
"[R]esidential character" can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc.). Population density can be regulated by reference to floor space and facilities. Noise and morality can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements.
27 Cal. 3d at 133, 610 P.2d at 441, 164 Cal. Rptr. at 544.

19. *Id.* at 133, 610 P.2d at 441-42, 164 Cal. Rptr. at 544-45 (emphasis in original).

20. *Id.* at 134, 610 P.2d at 442, 164 Cal. Rptr. at 545 (quoting Berger v. State, 71 N.J. 206, 225, 364 A.2d 993, 1003 (1976)).

21. State v. Baker, 81 N.J. 99, 108-09, 405 A.2d 368, 372 (1979) (quoting City of White Plains v. Ferraioli, 34 N.Y.2d 300, 306, 313 N.E.2d 756, 758, 357 N.Y.S.2d 449, 453 (1974)) *quoted at* 27 Cal. 3d at 134, 610 P.2d at 442, 164 Cal. Rptr. at 545.

22. 27 Cal. 3d at 134-37, 610 P.2d at 442-44, 164 Cal. Rptr. at 545-47.

impact outside of the areas of surveillance and data gathering. The leading supreme court cases defining the right are *White v. Davis*[23] and *People v. Privitera*.[24]

In *White* the plaintiffs alleged that undercover police officers were posing as students and attending classes at the University of California at Los Angeles. It was further alleged that the police were investigating no illegal activity; they were recording class discussions in order to compile dossiers on professors and students. The supreme court held that such allegations state a cause of action for violation of the right of privacy.[25]

Justice Tobriner, writing for a unanimous court, began the analysis of what the right to privacy encompassed by examining the ballot argument submitted by proponents of the amendment.[26] Such ballot arguments are the primary aids in interpreting a constitutional amend-

23. 13 Cal. 3d 757, 533 P.2d 222, 120 Cal. Rptr. 94 (1975).

24. 23 Cal. 3d 697, 591 P.2d 919, 153 Cal. Rptr. 431, *cert. denied*, 444 U.S. 949 (1979).

25. 13 Cal. 3d at 773-76, 533 P.2d at 232-35, 120 Cal. Rptr. at 104-07. The court also held that such allegations state a cause of action for violation of the federal constitutional guarantees of freedom of speech and association. *Id.* at 767-73, 533 P.2d at 228-32, 120 Cal. Rptr. at 100-04.

26. The argument in favor of the privacy amendment read in full:

> The proliferation of government snooping and data collecting is threatening to destroy our traditional freedoms. Government agencies seem to be competing to compile the most extensive sets of dossiers of American citizens. Computerization of records makes it possible to create "cradle-to-grave" profiles on every American.
>
> *At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian.*
>
> The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.
>
> *Fundamental to our privacy is the ability to control circulation of personal information.* This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.
>
> Even more dangerous is the loss of control over the accuracy of government and business records on individuals. Obviously, if the person is unaware of the record, he or she cannot review the file and correct inevitable mistakes. Even if the existence of this information is known, few government agencies or private businesses permit individuals to review their files and correct errors.
>
> The average citizen also does not have control over what information is collected about him. Much is secretly collected. We are required to report some information, regardless of our wishes for privacy or our belief that there is no public need for the information. *Each time we apply for a credit card or a life insurance policy, file a tax return, interview for a job, or get a drivers' license, a dossier is opened and an informational profile is sketched.* Modern technology is capable of monitoring, centralizing and computerizing this information which eliminates any possibility of individual privacy.
>
> The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is compelling pub-

ment adopted by a vote of the people.[27]

The *White* court's analysis of the ballot argument led it to two conclusions, neither of which would support the *Adamson* court's view of the privacy amendment. First, the court stated:

> Although the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief, [citing four examples of privacy analysis made under federal constitutional law,] the moving force behind the new constitutional provision was a more focussed privacy concern, relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society.[28]

Second, the court identified the specific concerns that the constitutional amendment addressed:

> (1) "government snooping" and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records.[29]

In *Privitera* the state prosecuted a doctor and others for the felony of conspiring to sell and to prescribe the drug laetrile. The supreme court upheld the jury conviction. The court, per Justice Clark, dismissed the contention that the ballot argument in support of the privacy amendment evidenced any intent to create a right that would include the freedom to use an unproven drug such as laetrile.[30] Chief Justice Bird and Justice Newman dissented, arguing that the majority had read *White* too narrowly.[31]

The courts of appeals also have narrowly interpreted the scope of the right of privacy. Although the courts generally have considered the right applicable in cases involving the use of personal information,[32]

> lic need. Some information may remain as designated public records but only when the availability of such information is clearly in the public interest.
>
> [The argument concludes by justifying a second change that the amendment made, not relevant to the scope of the "privacy" change.]

Ballot Pamphlet, Proposed Amendments to California Constitution with arguments to voters, General Election (Nov. 7, 1972), at 27 (emphasis in original).

27. 13 Cal. 3d at 775 & n.11, 533 P.2d at 234 & n.11, 120 Cal. Rptr. at 106 & n.11.

28. *Id.* at 773-74 & n.10, 533 P.2d at 233 & n.10, 120 Cal. Rptr. at 105 & n.10.

29. *Id.* at 775, 533 P.2d at 234, 120 Cal. Rptr. at 106.

30. 23 Cal. 3d at 709-10, 591 P.2d at 926, 153 Cal. Rptr. at 438.

31. *Id.* at 711, 727, 591 P.2d at 927, 937, 153 Cal. Rptr. at 439, 449 (Bird, C.J., dissenting) (*White* court "did not purport to sketch 'the full contours of the new constitutional provision' ") (quoting White v. Davis, 13 Cal. 3d at 773, 533 P.2d at 233, 120 Cal. Rptr. at 105); 23 Cal. 3d at 741, 591 P.2d at 946, 153 Cal. Rptr. at 458 (Newman, J., dissenting) (majority uses "selective quotation" to restrict right of privacy).

32. *See* Division of Medical Quality Assurance v. Gherardini, 93 Cal. App. 3d 669, 676-81,

they did not consider it applicable where known sex offenders were required to register with local law enforcement officials.[33] An apartment owner's right of privacy was not considered to be violated by a city inspector's unauthorized inspection of an apartment common area.[34] The amendment did not guarantee to tenants the right to have their children live with them against the wishes of an apartment owner whose building was on land leased from the city.[35] It was rejected in cases challenging convictions for personal use of cocaine[36] and marijuana.[37] Thus, the courts before *Adamson* had interpreted the privacy amendment as having fairly narrow parameters.

2. *The Scope of Federal Protections*

The *Adamson* formulation of the right to privacy under the California Constitution exceeds even the scope of the federal constitutional formulation, in that it adds to the previously modest state right of privacy a new component resembling an unlimited freedom of association. The Santa Barbara ordinance implicated neither of the interests said to underlie the federal right of privacy, namely the "interest in avoiding disclosure of personal matters, and [the] interest in independence in making certain kinds of important decisions."[38] The ordinance did not cause any disclosure of personal matters, nor did it purport to inquire into or regulate the conduct of persons concerning

156 Cal. Rptr. 55, 59-62 (4th Dist. 1979) (privacy right requires investigator to show compelling interest before examining medical records of patients of a doctor under investigation); Fults v. Superior Court, 88 Cal. App. 3d 899, 902-05, 152 Cal. Rptr. 210, 212-14 (1st Dist. 1979) (although privacy right is infringed by questions about plaintiff's sexual activity, there is compelling interest in obtaining truth in paternity suit); Richards v. Superior Court, 86 Cal. App. 3d 265, 272-73, 150 Cal. Rptr. 77, 81 (2d Dist. 1978) (privacy right does not prohibit disclosure of financial information for limited purposes of civil action); *cf.* Armenta v. Superior Court, 61 Cal. App. 3d 584, 588, 132 Cal. Rptr. 586, 588 (2d Dist. 1976) (use of undercover agent to uncover heroin sales does not violate privacy right because such use is related to specific criminal activity). *See also* Valley Bank v. Superior Court, 15 Cal. 3d 652, 656-57, 542 P.2d 977, 979, 125 Cal. Rptr. 553, 555 (1975) (disclosure of bank's customer records implicates right of privacy).

33. People v. Mills, 81 Cal. App. 3d 171, 181, 146 Cal. Rptr. 411, 417 (4th Dist. 1978).

34. Cowing v. City of Torrance, 60 Cal. App. 3d 757, 762, 131 Cal. Rptr. 830, 834 (2d Dist. 1976) (by implication; court never mentioned CAL. CONST. art. I, § 1).

35. *Cf.* Marina Point, Ltd. v. Wolfson, 98 Cal. App. 3d 140, 155, 158 Cal. Rptr. 669, 678 (2d Dist. 1979) (by implication; no interference with private sphere of personal choice in family living arrangements where competing property rights must be considered), *hearing granted and opinion superseded*, Dec. 6, 1979 (*see* CAL. R. CT. 976-77).

36. People v. Davis, 92 Cal. App. 3d 250, 260, 154 Cal. Rptr. 817, 823 (1st Dist. 1979).

37. National Org. for Reform of Marijuana Laws v. Gain, 100 Cal. App. 856, 592-93, 161 Cal. Rptr. 181, 183-84 (1st Dist. 1979).

38. Whalen v. Roe, 429 U.S. 589, 599-600 (1977) (footnotes omitted). For other analyses of what privacy means or should mean, see Gerety, *Redefining Privacy*, 12 HARV. C.R.-C.L.L. REV. 233 (1977); Comment, *A Taxonomy of Privacy: Repose, Sanctuary, and Intimate Decision*, 64 CALIF. L. REV. 1447 (1976); Note, Roe *and* Paris: *Does Privacy Have a Principle?*, 26 STAN. L. REV. 1161 (1974).

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"important decisions" as the United States Supreme Court has come to understand the term.[39] Indeed, even the traditional first amendment freedom of association has not been used to protect "private" activities of the sort protected in *Adamson*.[40] The California court recognized the inapplicability of the federal right of privacy in the *Adamson* situation, but simply noted that the California right of privacy is broader than the federal right.[41]

The *Adamson* formulation also ignores the distinction between families and nonfamilies established by the United States Supreme Court in its application of the fourteenth amendment to *Adamson*-like problems.[42] *Village of Belle Terre v. Boraas*[43] and *Moore v. City of East Cleveland*[44] evidence the different levels of protection afforded the two classes under the Federal Constitution. The *Belle Terre* court considered the constitutionality of a statute similar to that in *Adamson*. The court held that a zoning ordinance that restricted the types of families that could live in one-family zones to traditional families or not more than two unrelated persons was constitutional. The ordinance violated neither equal protection nor the rights of association, travel, or privacy.[45]

In *Moore*, the city had enacted a zoning ordinance that defined "family" so that only members of the nuclear family could live together

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39. The Court has never recognized the decision to live with unrelated individuals as an "important decision" protected by the right of privacy. *See, e.g.*, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). *See also* text accompanying notes 42-47 *infra*. If such a decision were considered "important," then presumably the current California restrictions on choosing renter-roommates, *see* CAL. GOV'T CODE §§ 12927(c), 12955 (West 1980), could be challenged as unconstitutional. It is interesting to note that the California court seemed to regard the above restrictions as compatible with the expanded right of privacy, 27 Cal. 3d at 134 n.4, 610 P.2d at 442 n.4, 164 Cal. Rptr. at 545 n.4, perhaps because classifications play a minor role in the restrictions. Thus, Ms. Adamson still is not completely free to pick her roommates solely on the basis of her personal values and preferences.

40. L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-23, at 701 (1978). Rather, the right of association has protected the joining together of people to engage in or advocate goals and activities "independently protected by the first amendment." *Id.* at 701-02.

41. 27 Cal. 3d at 130 n.3, 610 P.2d at 440 n.3, 164 Cal. Rptr. at 543 n.3.

42. Of course, since *Adamson* must have been decided on purely state constitutional grounds, *see* note 11 *supra*, this distinction is not controlling for the California Supreme Court. The state court is free to interpret its own constitution as it sees fit, so long as its interpretation does not undermine federal constitutional guarantees. *See* notes 53-54 and accompanying text *infra*. Moreover, to the extent the federal distinction is derived from cases involving constitutional claims not at issue in *Adamson*, *see generally* note 11 and accompanying text *supra* (actual basis for *Adamson* result not explicitly set out), the distinction may be inapposite.

However, the federal cases discussed in the text involved a variety of federal constitutional claims, including equal protection and the right of privacy. Since *Adamson* also appears to have been decided on both fundamental rights and equal protection grounds, *id.*, these federal cases are indeed relevant, although not controlling.

43. 416 U.S. 1 (1974).

44. 431 U.S. 494 (1977).

45. 416 U.S. at 7-9.

as a single household. The appellant had been convicted of living with her son and two grandsons, who were first cousins rather than brothers. The city argued that its ordinance must be sustained under *Belle Terre*. The Court rejected this argument, noting:

> [O]ne overriding factor sets this case apart from *Belle Terre*. The ordinance there affected only *unrelated* individuals. It expressly allowed all who were related by "blood, adoption, or marriage" to live together, and in sustaining the ordinance we were careful to note that it promoted "family needs" and "family values." East Cleveland, in contrast, has chosen to regulate the occupancy of its housing by slicing deeply into the family itself. . . .
>
> . . . 'This court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.' A host of cases . . . have consistently acknowledged a "private realm of family life which the state cannot enter."[46]

Smith v. Organization of Foster Families[47] confirms the disparate levels of federal constitutional recognition accorded family relationships on the one hand and quasi-family relationships on the other. In *Smith* a group of foster parents challenged the procedures for the removal of foster children from foster homes as being violative of the due process and equal protection clauses of the fourteenth amendment, in effect claiming an interest in the foster parent-child relationship akin to the interest recognized in relationships between members of natural families. While acknowledging that foster families share to a certain extent the characteristics of natural families, the Supreme Court held that foster parents, whose interest in the children arose entirely out of a state-created, usually temporary, contractual relationship, could claim no rights with regard to the children that would in any way interfere with the constitutional rights enjoyed by the natural parents regarding their children. Cases such as *Belle Terre*, *Moore*, and *Smith* make clear that federal constitutional law recognizes greater protection for the family vis-a-vis the government than it does for the nonfamily. The *Adamson* associational right of privacy clearly does not follow the federal scheme.

B. Arguments Against Expanding the Right of Privacy

There are two major arguments against expanding the right of privacy to include the right of unrelated persons to live with however many other persons they chose in any area of a city. First, this expansion is inconsistent with accepted principles of constitutional interpre-

46. 431 U.S. at 498-99 (plurality opinion) (citations omitted).
47. 431 U.S. 816 (1977).

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tation,[48] and, second, such an expansion effectively prevents cities from maintaining zones that are designed to foster family environments.

1. The Role of the Court in Constitutional Interpretation

The *Adamson* holding is not consonant with an awareness of the proper judicial role in interpreting the constitution. A number of factors counsel against the court's expansion of privacy. First, although the California Supreme Court is not bound by *Belle Terre* in interpreting the California Constitution, the court should consider that case as representative of the American values to which it should refer in defining the nebulous right of privacy.[49] Second, although not bound by the city's legislative judgment either, that judgment is more representative than the court's, and, should receive some deference from the court, especially since the court might have considered the legislative process incomplete until Adamson had exhausted her administrative remedies,

48. There are several theories of how courts should approach constitutional adjudication. *See* Nowak, Book Review, 68 CALIF. L. REV. 1223, 1226-27 (1980). *Compare* R. BERGER, GOVERNMENT BY JUDICIARY (1977) (decision should follow literal wording of constitutional text) *with* J. ELY, DEMOCRACY AND DISTRUST 1-41 (1980) (decision should follow textual provisions of constitution and support values necessary to representative government); J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 410-19 (1978) (decision should be principled so that consistency is achieved, authority enhanced, and stability of democratic system maintained); L. TRIBE, *supra* note 40, ch. 11, at 564-75 (decision should be based on constitution's language, its history, and history and values of American society); *and Grey, Do We Have an Unwritten Constitution?*, 27 STAN. L. REV. 703, 706 (1975) (decision should be based on "basic national ideals of individual liberty and fair treatment," whether expressed or not).

Adamson is not reconcilable with any of these five different theories. The text that follows shows that the court's interpretation of the privacy amendment is inconsistent with the amendment's history, with the history and values of American society, and with previous interpretations of the amendment. While one is tempted to argue that the decision is compatible with the Berger theory, R. BERGER, *supra*, because the privacy right is explicitly guaranteed in the California Constitution, such an approach nonetheless misses the critical issue. Under either the explicit California right or the implicit federal right, the key question is what the scope of the right is to be, a question that cannot be decided simply by referring to the explicitness of the guarantee. *See* text accompanying notes 49-69 *infra*.

49. *Cf.* Poe v. Ullman, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting), *quoted in* Moore v. City of E. Cleveland, 431 U.S. at 501 (plurality opinion) (footnote omitted):

> If the supplying of content to this Constitutional concept [of due process] has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint.

But see State v. Baker, 81 N.J. 99, 405 A.2d 368 (1979) (invalidating a definition of family similar to that in *Adamson* on the basis of generalities in the New Jersey Constitution). *Compare* Children's Home v. City of Easton, — Pa. Commw. Ct. —, 417 A.2d 830 (1980) (definition of family that excluded foster family held unconstitutional based on *Moore*) *with* Carroll v. Washington Township Zoning Comm'n, 63 Ohio St. 2d 249, 408 N.E.2d 191 (1980) (per curiam) (opposite result for a foster family that included many more children).

namely, the variance process.[50] Third, and perhaps most disturbing, the court largely ignored the voter intent in amending the California Constitution and made a radical departure from previous cases interpreting the privacy right.

In approving the privacy amendment, the voters were addressing the limited problem articulated in the election brochure. While the nature of a constitutional amendment may imply a potentially broader scope of application than would a statutory amendment,[51] the intent of the voters must nevertheless be considered in assessing that scope.[52]

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50. It is settled California law that a plaintiff who alleges that a law is unconstitutional as applied must exhaust his administrative remedies. *See, e.g.*, Metcalf v. County of Los Angeles, 24 Cal. 2d 267, 269, 148 P.2d 645, 646 (1944); United States v. Superior Court, 19 Cal. 2d 189, 194, 120 P.2d 26, 29 (1941). The rule is justified because it conserves judicial resources by allowing state agencies to correct their own errors and allows an initial decision to be made by a body that usually will have more expertise than a court while reserving to the court ultimate judgment. *See* Ryckman, *Land Use Litigation, Federal Jurisdiction, and the Abstention Doctrines*, 69 CALIF. L. REV. 377, 392 (1981) (justifications of the analogous federal rule). *See also id.*, at 377 (plaintiff would be wise to seek administrative relief first). The *Adamson* court appeared to hold that plaintiff need not exhaust administrative remedies if the statute is unconstitutional on its face. 27 Cal. 3d at 137, 610 P.2d at 444, 164 Cal. Rptr. at 547. The more egregiously unconstitutional a statute is, the more this rule seems justified. For example, a statute that stated that a member of a racial minority was barred from some benefit unless that member were exempted by a state agency would obviously be unconstitutional on its face, and it would be ridiculous to require an administrative appeal before allowing a constitutional challenge. On the other hand, the variance procedure is designed for special cases, such as that presented by the *Adamson* twelve. If the court's decision stands for the proposition that any restriction on the number of people who may live together is unconstitutional, then waiver of the administrative exhaustion requirement seems sound. *See* Staub v. City of Baxley, 355 U.S. 313, 319 (1958). If, however, the decision stands only for the proposition that any restriction on the number of people in a family-like group who may live together is unconstitutional, then it would seem appropriate to require use of the variance procedure. Many groups of unrelated persons probably would be unfamily-like, and therefore the statute would be constitutional as applied to those groups. For those groups that were family-like, the statute would only be unconstitutional if a variance were not granted. Challenges to the statute could be treated similarly to "taking" challenges.

51. *See* People v. Western Air Lines, 42 Cal. 2d 621, 635, 268 P.2d 723, 731, *appeal dismissed*, 348 U.S. 859 (1954); Cooperrider v. San Francisco Civil Serv. Comm'n, 97 Cal. App. 3d 495, 501, 158 Cal. Rptr. 801, 804-05 (1st Dist. 1979); Miro v. Superior Court, 5 Cal. App. 3d 87, 98, 84 Cal. Rptr. 874, 880 (4th Dist. 1970).

The justification often offered for novel and expansive interpretation of broad or general constitutional language is that the adoption of a constitution or a constitutional amendment manifests an intent to provide principles that will be adaptable to changing circumstances and social conditions rather than to lock in the values of a particular historical period. *Cf.* McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1820) ("[W]e must never forget that it is a constitution we are expounding."). This reasoning suggests, however, that the original understanding of an amendment should be deferred to when a court is interpreting the amendment soon after its passage, particularly if social conditions have not changed significantly in the interim. *See* Knowles v. Yates, 31 Cal. 82, 89 (1866); *cf.* Weems v. United States, 217 U.S. 349, 373 (1910) ("Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth").

52. Board of Supervisors v. Lonergan, 27 Cal. 3d 855, 863, 616 P.2d 802, 806, 167 Cal. Rptr. 820, 824 (1980); Fields v. Eu, 18 Cal. 3d 322, 328-29, 556 P.2d 729, 733, 134 Cal. Rptr. 367, 371 (1976); Pollack v. Hamm, 3 Cal. 3d 264, 273, 475 P.2d 213, 218, 90 Cal. Rptr. 181, 186 (1970);

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The central analytical difficulty in the *Adamson* opinion, one that is not present in either the *White* or *Privitera* opinions, is that the court does not justify its interpretation of what the right of privacy means. In both *White* and *Privitera* the court examined the ballot argument, made a reasonable interpretation of voter intent based on the evidence available to the court, and decided the specific issue before the court. However, in *Adamson* the court concluded that the California right of privacy was broader than the corresponding federal right without offering any justification as to why it should be broader.

Undeniably, the California Supreme Court is the final arbiter of the meaning of the state constitution.[53] Furthermore, the fact that the California Constitution may parallel, or even duplicate, the language of the Federal Constitution does not restrict the California Supreme Court from interpreting the state constitution differently.[54] However, the *Adamson* majority's conclusion that the state right of privacy is broader than the federal right is supported by no analysis and by only two citations,[55] neither of which justifies the court's conclusion. The first citation is to California Constitution, article I, section 24, which provides merely that the California Constitution may be interpreted more expansively than the Federal Constitution.[56] It does not answer the question of whether in this case the right of privacy should be so interpreted. The second citation is to that portion of *White* that quotes the 1972 election brochure argument extensively. As the following analysis shows, the election brochure argument suggests a much narrower interpretation than the one the court arrived at.

Analysis of the election brochure argument is the primary evidence of voter intent in passing an amendment.[57] The brochure argument, as a whole, suggests that the primary purpose of the privacy amendment was to protect people against police surveillance and the compilation and dissemination of personal information.[58] The supreme court cautioned in *White* that it was not definitively examin-

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Cooperrider v. San Francisco Civil Serv. Comm'n, 97 Cal. App. 3d 495, 501, 158 Cal. Rptr. 801, 804-05 (1st Dist. 1979).

53. People v. Pettingill, 21 Cal. 3d 231, 247-48, 578 P.2d 108, 118, 145 Cal. Rptr. 861, 871 (1978).

54. *E.g.*, *id.* (self-incrimination); Serrano v. Priest, 18 Cal. 3d 728, 764-65, 557 P.2d 929, 950-51, 135 Cal. Rptr. 345, 366-67 (1976) (equal protection), *cert. denied*, 432 U.S. 907 (1977); People v. Brisendine, 13 Cal. 3d 528, 549-50, 531 P.2d 1099, 1113, 119 Cal. Rptr. 315, 329 (1975) (search and seizure).

55. *See* 27 Cal. 3d at 130 n.3, 610 P.2d at 440 n.3, 164 Cal. Rptr. at 543 n.3.

56. CAL. CONST. art. I, § 24 provides: "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. This declaration of rights may not be construed to impair or deny others retained by the people."

57. White v. Davis, 13 Cal. 3d at 775 & n.11, 533 P.2d at 234 & n.11, 120 Cal. Rptr. at 106 & n.11.

58. *See id.* at 774-75, 533 P.2d at 233-34, 120 Cal. Rptr. at 105-06.

ing the scope of the amendment.[59] Nevertheless, a constitutional amendment specifically directed at the narrow problem of government prying into people's personal lives should not be construed as establishing a right of privacy broader than even the federal constitutional right of privacy,[60] a right which covers a wide range of activities.[61] The amendment's scope should be limited to those aspects of privacy that were considered to be within the focus of the amendment.

The structure of the ballot argument suggests such a limited scope to the privacy right. The first paragraph identifies three threats: "government snooping and data collecting," "dossiers," and "[c]omputerization of records."[62] The second, fourth, fifth, and sixth paragraphs concern solely the need to prevent these dangers.[63] The *Adamson* court quoted only the third and seventh paragraphs, which contain more expansive language. The seventh paragraph is clearly rhetorical: it invokes the rights guaranteed by the Federal Constitution, and labels them an "important American heritage."[64] The third paragraph begins rhetorically,[65] expressing in the broadest language the amendment's underlying values, and goes on to state specifically the protections to be afforded by the amendment: "[The amendment] prevents government and business from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarass [sic] us."[66] It is reasonable to think that the voters who read this language believed the amendment was to be limited in its scope. The

59. *Id.* at 773, 533 P.2d at 233, 120 Cal. Rptr. at 105 ("the full contours of the new constitutional provision have as yet not even tentatively been sketched"); *accord*, National Org. for Reform of Marijuana Laws v. Gain, 100 Cal. App. 3d 586, 592, 161 Cal. Rptr. 181, 184 (1st Dist. 1979) (*Privitera* [and by implication, *White v. Davis*] does not constrain the application of the right of privacy only to surveillance and data collection cases).

60. It is likely that the California right of privacy will be interpreted to cover virtually the same range of activities as the federal right, and could well be interpreted more broadly. *See* 27 Cal. 3d at 130 n.3, 610 P.2d at 440 n.3, 164 Cal. Rptr. at 543 n.3. *See also* Committee to Defend Reproductive Rights v. Myers, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981) (abortion funding).

61. *E.g.*, Bellotti v. Baird, 443 U.S. 622 (1979) (minor's right to abortion); Zablocki v. Redhail, 434 U.S. 374 (1978) (right to remarry); Moore v. City of E. Cleveland, 431 U.S. 494 (1977) (right of family to live together); Roe v. Wade, 410 U.S. 113 (1973) (right to choose an abortion); Eisenstadt v. Baird, 405 U.S. 438 (1972) (right to use contraceptives); Stanley v. Georgia, 394 U.S. 557 (1969) (right to view obscenity in one's home).

62. *See* note 26 *supra*.

63. *See id.*

64. *See id.*

65. Actually, the first sentence claims the right of privacy to be the "right to be left alone." *Id.* This must be mere rhetoric, since if there were really such a right, then any government action that affected individuals would be unconstitutional unless it could meet the test of strict scrutiny. *Cf.* Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920, 932 (1973) (privacy cannot "mean the freedom to live one's life without governmental interference").

66. *See* note 26 *supra*.

amendment argument did not advocate and the voters did not approve the broad right read into the amendment by the *Adamson* court.

An interpretation of the right of privacy that would be consonant with accepted principles of constitutional interpretation and with the expression of voter intent evidenced by the ballot argument would produce a right similar in scope to the right of privacy that arises from the fourth amendment. The threat to privacy that the ballot argument decried is similar to that protected against by the fourth amendment,[67] since the ballot argument addressed primarily government snooping and police surveillance. Inasmuch as the ballot argument was directed at collection, retention, and dissemination of information, it suggests a constitutional protection against invasions of privacy in the sense of the classic Brandeis and Warren article on the subject.[68] The amendment thus should be interpreted to prohibit unnecessary use of personal information and to disallow any governmental immunity that might protect state officials from suit for violations of this right.

The general concept of privacy is vague and must be fleshed out before it can become a protection against unwarranted interference. However, should that concept require more substance than that which the voters intended to give it, the task of giving it content should be approached with an awareness of the role of the courts in interpreting a constitution in a democratic society.[69] Decisions that radically change existing policies are necessarily made with less predictability and confidence than are decisions that make incremental changes. As the following subsection indicates, *Adamson* illustrates the need for caution in such situations, in that it holds grave consequences for the future of family-oriented land use planning.

2. *The End of Maintaining Family Zones*

According to the *Adamson* court, a city wishing to further its legitimate interest in maintaining family environments can look to two per-

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67. *See* Katz v. United States, 389 U.S. 347 (1967).

68. Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

69. Restraint in interpretation of a constitution is more important than in interpretation of a statute because revision of the former by the people or their representatives is much less likely than revision of the latter. *Cf.* State v. Baker, 81 N.J. 99, 115, 405 A.2d 368, 375 (1979) (Mountain, J., dissenting) (court should not invalidate an ordinance similar to that in *Adamson* on constitutional grounds). *See also* Hessling v. City of Broomfield, 193 Colo. 124, 563 P.2d 12 (1977) (obtaining the *Adamson* result on statutory grounds); City of Des Plaines v. Trottner, 34 Ill. 2d 432, 216 N.E.2d 116 (1966) (same); City of White Plains v. Ferraioli, 34 N.Y.2d 300, 313 N.E.2d 756, 357 N.Y.S.2d 449 (1974) (same).

For a general discussion of the role of the courts in a democratic society, *see generally* A. BICKEL, THE LEAST DANGEROUS BRANCH (1962); J. CHOPER, JUDICIAL REVIEW AND THE NATIONAL POLITICAL PROCESS: A FUNCTIONAL RECONSIDERATION OF THE ROLE OF THE SUPREME COURT (1980); J. ELY, *supra* note 48.

missible alternatives to the Santa Barbara approach. The court noted that ordinances could be redrawn to define "family" in such a way as to include bona fide single housekeeping units as well as traditional families, as was suggested by the New Jersey Supreme Court.[70] Another suggested alternative was to enact regulations expressly directed to the specific uses deemed offensive to family environments.[71] Unfortunately, neither of these approaches will guarantee to the city environments conducive to the raising of children as would a Santa Barbara-type ordinance.

a. Conceptual Families

Initially, one must ask how an ordinance that is redrawn to permit "conceptual families" to live in family areas, but not "true nonfamilies," will be any less subject to the objection that its discriminatory classifications are grounded in speculative, stereotypical presumptions concerning the conduct of different groups of people than was the Santa Barbara ordinance. None of the suppositions regarding the differences between conceptual families and true nonfamilies can be said to be "universal truths" in the sense that eliminating the latter from a neighborhood will automatically eliminate the problems presumed to be associated with them. A redrawn regulation in the New Jersey fashion still suffers from the defect of commanding inquiry into who are the users rather than focusing on the use itself. A conceptual family rule is no more pertinent to "noise, traffic or parking congestion, kinds of activity, or other conditions that conceivably might alter the land-use-related 'characteristics' or 'environment' of the districts"[72] than was the Santa Barbara ordinance. To the extent that a city cannot prove that true nonfamilies are the sole cause for the problems under attack, or conversely that conceptual families are not completely free from such problems, the redrawn ordinance would still have to be considered as establishing arbitrary classifications.[73]

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70. 27 Cal. 3d at 133-34, 610 P.2d at 442, 164 Cal. Rptr. at 545.

71. *Id.* at 133, 610 P.2d at 441-42, 164 Cal. Rptr. at 544-45.

72. *Id.* at 132-33, 610 P.2d at 440, 164 Cal. Rptr. at 544 (quoting SANTA BARBARA, CAL., MUNICIPAL ORDINANCE § 28.15.005).

73. *See* notes 11 & 16 and accompanying text *supra* for a discussion of the interplay in *Adamson* of fundamental rights and equal protection. The arbitrary classification argument literally would be an equal protection argument, but it would probably be invoked after strict scrutiny had already been applied on account of the infringement of the right of privacy. *See* text accompanying note 74 *infra*.

Adamson seems to preclude municipal legislative bodies from making class judgments that infringe fundamental rights on the basis of minimal evidence or undocumented perceptions. *See, e.g.*, 27 Cal. 3d at 132, 610 P.2d at 441, 164 Cal. Rptr. at 544 (data on the average size of related groups insufficient to justify low density protection without comparable data for unrelated groups). This means that before any type of discriminatory housing zoning can be enacted, the city must either commission a demographic study or believe that its general perceptions are virtu-

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In the absence of some significant universal truth upon which to base a discriminatory distinction, the *Adamson* formulation of the right to privacy would allow virtually any group to claim a right to live together. For instance, the court apparently approved of the exclusion of fraternities from family zones.[74] However, such dictum is inconsistent with the associational right of privacy established by *Adamson*—particularly when groups such as fraternities can describe themselves, with some accuracy, as being like a family. Indeed, the logic of *Adamson* suggests that even bigamy and polygamy should not be proscribed activities in California, since the assumptions pertaining to the specific social evils to be controlled by the prohibitions probably cannot be characterized as "universal truths," yet such assumptions are used to violate people's associational privacy. Under the *Adamson* reasoning, a more appropriate law in either the fraternity or the polygamy/bigamy case would focus on the evils to be prevented—*e.g.*, noise, overcrowding, traffic, spousal neglect, child neglect, etc.—rather than on the type of relationship involved.

A related problem with the conceptual family approach is that its workability is premised on the city's ability to draw the line between conceptual families and true nonfamilies. Although the court seemed willing to assume that fraternities, for example, could be excluded from family zones, neither the court nor the Santa Barbara ordinance so restricting the fraternities explained why a fraternity was not like a conceptual family. The members of a fraternity regularly share meals, chores, social activities, and expenses; they provide emotional support to one another; they may live as members of the household for three to five years. Indeed, the members of a fraternity consider themselves to be "brothers," and often the older brothers play a role in guiding their younger brothers through the college experience. The *Adamson* family, which had been living together for only two months at the time the city sued them, differed from a fraternity only in that its members were slightly older than most fraternity members and consisted of members of both sexes. Neither of these distinctions is relevant in determining

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ally 100% accurate. Under *Adamson*'s strict scrutiny, there is no reason why a city should not be held to this high standard when it enacts a New Jersey-type, conceptual family ordinance, the *Adamson* court's dictum notwithstanding. Only in the easy case where no privacy right can be plausibly claimed—*e.g.*, among apartment tenants, guests in hotels/motels, etc.—would the city's action be judged under a less strict standard. Where a group does not claim to be a conceptual family but nevertheless lives in the same residence—perhaps sharing only the rent, or perhaps not even that—the associational right of privacy arguably applies. One need not like the people he chooses to live with; the associational freedom should be commensurate with that reality. A distinction that infringes on that right is arbitrary and under *Adamson* invalid, regardless of whether it penalizes conceptual families or true nonfamilies.

74. *See* 27 Cal. 3d at 135 n.5, 610 P.2d at 443 n.5, 164 Cal. Rptr. at 546 n.5 (noting that fraternities and sororities are restricted to R-2 zones).

what constitutes a bona fide household, and they certainly are irrelevant to the scope of the privacy protection.

The *Adamson* court did not question the fact that the twelve were like a family since there were findings in the record to support this proposition. The city presumably did not bother to contest this issue in the trial court because under the prior law established in *Village of Belle Terre v. Boraas*,[75] such a relationship did not offer a federal constitutional defense to the city's action. However, if the courts now hold that the degree to which a group is like a family is relevant to whether the group has a right to live together—an almost inescapable holding if the cities and courts wish to implement the *Adamson* conceptual family recommendation—a city wishing to maintain family zones in the New Jersey fashion will likely resort to one of two enforcement approaches. Either the city could sue a group like the *Adamson* twelve when the group first comes together, *i.e.*, at a point when the group could not yet claim to be a family,[76] or it might sue later and seek to prove that the group still was not, or was no longer, like a family. Either course would require enforcement tactics that would be directly contrary to the interest in keeping government from prying into the lives of its citizens that was explicitly addressed in the privacy amendment argument and in *White v. Davis*.[77] The first alternative would require city officials to keep abreast of who was moving into the city's various neighborhoods, and the second would require constant monitoring of the bonds and interactions among the members of the group. Only a decision that any number of unrelated people can live together in single family zones regardless of whether they can be characterized as conceptual families avoids promoting a conflict between the associational rights set out in *Adamson* and the protection-from-prying rights set out in *White*. This suggests that the preservation of family zones through *Adamson*'s conceptual family approach should not be encouraged, and, indeed, is impracticable.

b. Regulating Specific Offensive Uses

The *Adamson* court suggested that an alternative method to

75. 416 U.S. 1 (1974).

76. Two months after the *Adamson* group met and moved in together, the members were like a family. If the suit had been brought two months earlier, the group might not have made such a convincing family, and the outcome might conceivably have been different. Since the court held that the ordinance was invalid on its face, litigation may arise after cities try to zone a family district by defining family so that it is not dependent upon any legal relationship. If the court then decides a case under such a statute, it may have to decide whether the privacy interest in a group trying to become family-like is as weighty as the privacy interest of the *Adamson* group. No principle is apparent why there should be more of a right to remain family-like than to become family-like.

77. 13 Cal. 3d 757, 533 P.2d 222, 120 Cal. Rptr. 94 (1975).

achieve the city's goal would be to enact regulations expressly directed to the specific uses deemed offensive to family environments. The court suggested that population density could be controlled by regulating floor space and facilities, that noise and morality could be dealt with by criminal statutes, and that traffic and parking problems could be curbed by limitations on the number of cars each household can have and by off-street parking requirements.[78] These suggestions, however, do not seem tenable.

First, it is not clear that any kind of use-oriented regulations could deal with such important intangibles as neighborhood stability and composition, which have as great an impact on the family character of a neighborhood as do the problems enumerated by the court.[79] It would seem that no valid laws could encourage stability, since any such laws would be focusing on the composition of the neighborhood's households. Similarly, no valid law could penalize a person for failing to share to the same degree as families with children the concerns for the safety, health, and social development of children.

Second, it would be more difficult to maintain family zones in light of the rise in housing prices that would accompany the entry of unrelated groups into the market for homes in single family neighborhoods. It may be expected that a group like the *Adamson* twelve, with many more income earners than traditional families, would be able to outbid such families for housing, thereby driving up housing prices beyond the means of many families.

Finally, even the specific solutions to the enumerated problems suggested by the court are of dubious merit. Minimum per person floor space requirements would be expensive to administer and open to the charge of discrimination against the poor.[80] The threat of criminal sanctions for excessive noise perhaps will succeed in ending loud noises from individual, isolatable sources, but it will have no effect in restricting the general increase in noise levels that increased intensity of use by unrelated groups would cause. The possibility of limiting cars is politically unlikely. Moreover, neither that possibility nor a requirement for

78. *See* note 18 *supra*.

79. Although the court is clearly correct that the assumption that all unrelated groups pose greater dangers to family zones than do all equally-sized families does not reflect a "universal truth," and is generally not susceptible to proof one way or the other, it nevertheless reflects a judgment that legislative bodies are as qualified as any to make. After *Adamson*, legislators cannot rely on unquantifiable perceptions as to what action is likely to improve family life in a neighborhood.

80. *See* Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A.2d 713 (1974), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975). *But cf.* City of Chula Vista v. Pagard, 115 Cal. App. 3d 785, 171 Cal. Rptr. 738 (4th Dist. 1981) (court invalidated ordinance similar to that in *Adamson*, but remanded for determination as to whether any of the overcrowded communal arrangements were public nuisances).

off-street parking protects the safety of young children as well as simply decreasing the number of regular drivers in family areas who, because they do not belong to neighborhood families, may be less aware of the extra caution needed while driving through neighborhoods in which young children live. Thus, these use-oriented restrictions do not further the city's interest in fostering family environments to the same degree as would a Santa Barbara-type ordinance which focuses on the composition of neighborhoods.

CONCLUSION

In sum, neither precedent, voter intent, nor sound judicial policy supports the court's expansion of the right of privacy. In addition, the specific application of that right in *Adamson* hinders achievement of a number of legitimate governmental objectives through land use planning.[81] In particular, it threatens to prevent cities from establishing and maintaining family zones and promoting family values.

The *Adamson* decision disregards the limited purpose behind the California privacy amendment. *Adamson* and the later decision in *Committee to Defend Reproductive Rights v. Myers*[82] demonstrate that the California Supreme Court has developed a state constitutional right of privacy that will allow the court to invalidate laws that are constitutional under the parallel federal standard of privacy and which, more importantly, do not concern information gathering or unwarranted surveillance.

*Thomas H. Kagy**

81. *See* Village of Belle Terre v. Boraas, 416 U.S. at 9. "[C]ontrol[ling] population density, prevent[ing] noise, traffic and parking problems, and preserv[ing] the rent structure of the community and its attractiveness to families . . . are all legitimate and substantial interests of government." *Id.* at 18 (Marshall, J., dissenting).

It should be noted that Santa Barbara has requested the League of California Cities to sponsor legislation placing another constitutional amendment on the ballot that would cause article I, section I of the California Constitution as it pertains to regulation of unrelated groups in single-family zones to be construed in much the same way as the Federal Constitution. A. Fischer, The Adamson Case, Residential Zoning of Unrelated Groups 10-11 (1980) (delivered at the League of California Cities' City Attorneys' Dept. Annual Conference) (on file at *California Law Review*).

82. 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981).

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27 Cal.3d 123 (1980)
610 P.2d 436
164 Cal. Rptr. 539

CITY OF SANTA BARBARA, Plaintiff and Respondent,
v.
BEVERLY ADAMSON et al., Defendants and Appellants.

Docket No. L.A. 31126.

Supreme Court of California.

May 15, 1980.

125 *125 COUNSEL

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OPINION

NEWMAN, J.

"All people ... have inalienable rights", proclaims the California Constitution in the first sentence of article I. The second sentence reads: "Among these [inalienable rights] are enjoying ... life and liberty, ... possessing ... property, and pursuing and obtaining ... happiness, and privacy."[1]

Appellants argue that **Santa Barbara** and the trial court have violated those rights because the court, on request of the **city**, ordered appellants to comply with a **city** ordinance which requires, in the zone where appellants and other individuals live together, that all occupants of houses like that in which they reside be members of a family.

127 *127 Section 28.10.030 of the ordinance commands that no premises be used "in any manner other than is permitted in the zones in which such ... premises are located." Other sections describe the zones; those most directly involved here are the one-family, two-family, and multiple-family residence zones. The trial court concluded that appellants may not reside in such zones because they and individuals with whom they wish to live are not within the ordinance's definition of "family":

"28.04.230 *Family*.

"1. An individual, or two (2) or more persons related by blood, marriage or legal adoption living together as a single

housekeeping unit in a dwelling unit....

"2. A group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit."

The record shows that appellants are three residents of a house in a single-family zone where the minimum lot-size is one acre. They and other individuals form a group of 12 adults who live in a 24-room, 10-bedroom, 6-bathroom house owned by appellant **Adamson**. The occupants are in their late 20's or early 30's and include a business woman, a graduate biochemistry student, a tractor-business operator, a real estate woman, a lawyer, and others. They are not related by blood, marriage, or adoption.

They moved into the house after **Adamson** acquired it on December 1, 1977. On February 9, 1978, following warnings, the **city** attorney sued for a temporary restraining order, preliminary injunction, and permanent injunction. A restraining order was issued on March 7, 1978; a preliminary injunction on March 29, 1978.

Appellants' household illustrates the kind of living arrangements prohibited by the ordinance's rule-of-five. (§ 28.04.230, subd. 2, *supra*.) They chose to reside with each other when **Adamson** made it known she was looking for congenial people with whom to share her house. Since then, they explain, they have become a close group with social, economic, and psychological commitments to each other. They share expenses, rotate chores, and eat evening meals together. Some have children who regularly visit. Two (not including **Adamson**) have contributed over $2,000 each to improving the house and defraying costs of this lawsuit. Emotional support and stability are provided by the members to each other;
128 they enjoy recreational activities such as a trip to Mexico together; *128 they have chosen to live together mainly because of their compatibility.

Regarding physical environment, the house has 6,231 square feet of space and is hidden from the street by trees and a fence. It has off-street parking for at least 12 cars. Appellants have built a wall around part of the property and a new, private driveway to help isolate them from neighbors' houses. There is no evidence of overcrowding though, after appellants had arrived, some neighbors did notice a larger number of cars parked on the property and an understandable increase in the number of residents.

Appellants say that they regard their group as "a family" and that they seek to share several values of conventionally composed families. A living arrangement like theirs concededly does achieve many of the personal and practical needs served by traditional family living. It could be termed an alternate family. It meets half of **Santa Barbara's** definition because it is "a single housekeeping unit in a dwelling unit." It fails to meet the part of the definition that requires residents, if they are more than five and are not servants, to be related by blood, marriage, or adoption.

THE ORDINANCE'S RESTRICTIONS

Valid laws can, of course, be written to help promote and protect values that family life enhances. The question in this case is whether that kind of law may deny to individuals who are not family members certain benefits that family members enjoy.

The ordinance at issue is 93 pages long. The words "family" and "families" are used at least 85 times. Because of various phrases in which the words are used it appears that, in **Santa Barbara**, appellants and their associates are denied the right to reside together in a one-family, two-family, or multiple-family dwelling, a "garden apartment development," and "a trailer or cabana or combination thereof." Other possible abodes not adaptable to their needs include hotel ("the more or less temporary abiding place of individuals who are lodged"), tourist court ("designated for ... [use] temporarily by automobile tourists or transients"), and auto trailer ("designed ... to travel on the public thoroughfares at the maximum allowable speed limit").

129 *129 Where then, according to the ordinance, might they reside together? Apparently nowhere, with three exceptions: *First,* if any five or less of them were acceptable as masters, perhaps the others then could sign on as servants. (See § 28.04.230, which in part defines family as any "group of not to exceed five (5) persons, excluding servants ..."; cf. §

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28.04.180: "all necessary servants and employees of such family." The legality of such clauses has not been argued here, but they appear to present equal protection questions.)

Second, if appellants could meet the requirements of section 28,94,001 they then might obtain from the Planning Commission a conditional use permit to maintain a boarding house in another zone, unlike where they now reside. (See § 28.94.030, subd. 17; also § 28.04.100, stating that a boarding house is "[a] building where meals and/or lodging are provided for compensation for six (6) or more persons by pre-arrangement for definite periods,")

Third, they might apply for a variance pursuant to chapter 28.92 of the ordinance. (We discuss below this suggestion of the **city** attorney, as well as his "boarding house" suggestion.)

Do the ordinance's restrictions, with those three exceptions, respect the commands of the California Constitution concerning people's rights to enjoy life and liberty, to possess property, and to pursue and obtain happiness and privacy?

Our leading precedent on privacy is *White* v. *Davis* (1975) 13 Cal.3d 757 [120 Cal. Rptr. 94, 533 P.2d 222], where this court observed that "the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief...." (*Id.,* pp. 773-774; and see fn. 10 regarding "the wide variety of contexts in which the constitutional privacy analysis has been employed"; Bostwick, *A Taxonomy of Privacy: Repose, Sanctuary, and Intimate Decision* (1976) 64 Cal.L.Rev. 1447, 1450: "Prosser, as a specialist on torts, focused his analysis on harm-causing activities that were proscribed rather than on zones to be protected. The [United States] Supreme Court rapidly outpaced his summary of the law of privacy and a new attempt at classification became necessary," See too *Atkisson* v. *Kern County Housing Authority* (1976) 59 Cal. App.3d 89, 98 [130 Cal. Rptr. 375], *re* ban against unmarried cohabiting adults.)

130 *130 The court in *White* v. *Davis* quoted these words from "a statement drafted by the proponents of the provision [that added `privacy' to the California Constitution] and included in the state's election brochure" (13 Cal.3d at pp. 774-775): "`The right of privacy is the right to be left alone. *It is a fundamental and compelling interest.* It protects our *homes,* our *families,* our thoughts, our emotions, our expressions, our personalities, our *freedom of communion,* and our *freedom to associate with the people we choose.* ... [¶] The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. *This right should be abridged only when there is a compelling public need.* ...'" (Italics added,)

That ballot argument evidenced the voters' intent in 1972 to ensure a right of privacy not only in one's family but also in one's home.[2] The question now is whether that right comprehends the right to live with whomever one wishes[3] or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption.

131 *131 **ENDS AND MEANS**

(1) As was indicated in the foregoing excerpt from the 1972 ballot pamphlet and stressed by the unanimous court in *White* v. *Davis, supra,* "the amendment does not purport to prohibit all incursion into individual privacy but rather that any such intervention must be justified by a compelling [public] interest." (13 Cal.3d at p. 775.) Has **Santa Barbara** demonstrated that, in fact, such an interest does underlie its decision to restrict communal living?

The over-all intent of the ordinance, according to section 28.01.001, is "to serve the public health, safety, comfort, convenience and general welfare and to provide the economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for future growth and development of said **City**." By themselves those words hardly justify the restrictions that appellants contest here.

A more specific intent, underlying the setting-up of two-family and multiple-family zones, as well as "garden apartment," "planned residence," and "planned unit" developments, is "to establish, maintain and protect the essential characteristics of the district, to develop and sustain a suitable environment for family life, and to prohibit activities of a commercial

nature and those which would tend to be inharmonious with or injurious to the preservation of a residential environment." (See §§ 28,18,001, 28,21,001, 28,21,005(1), 28,30,032, 28,33,030, and 28,36,030.)

132 *132 For one-family zones, section 28,15,005 specifies additionally the kind of family life "where children are members of most families." ("These zones are restricted residential districts of low density in which the principal use of land is for single-family dwellings; together with recreational, religious and educational facilities required to serve the community. The regulations for these districts are designated and intended to establish, maintain and protect the essential characteristics of the district, to develop and sustain a suitable environment for family life where children are members of most families, and to prohibit all activities of a commercial nature and those which would tend to be inharmonious with or injurious to the preservation of a residential environment.")

Does the ordinance's rule-of-five truly and substantially help effect those goals? Looking first at the final two words in section 28,15,005 (just quoted), is a "residential environment" in fact dependent on a blood, marriage, or adoption relationship among the residents of a house? Is transiency, for example, determined by lack of any biological or marriage relation among the residents? We are not persuaded by facts presented here.

Regarding "low density" (in the first sentence of § 28,15,005) the ordinance limits only the number of unrelated residents. It does not limit the number of related residents, or of servants. It does not appear to have been designed to prevent overcrowding, which may be a legitimate zoning goal. It proscribes some groups that in their homes are not crowded; yet, simply because the members are related, it leaves uncontrolled some groups that are crowded.

The **city** argues that related groups tend to have a natural limit, making a legal limit unnecessary; and data on average-size families are presented. Comparable data have not been presented, however, on the average sizes of unrelated groups who live as single housekeeping-units; and, at best, density control is achieved quite indirectly, if at all, by regulating only the size of unrelated households.

Other aims of the ordinance's restrictions are to maintain "the essential characteristics of the districts" and "a suitable environment for family life where [in single-family zones only] children are members of most families." But the rule-of-five
133 is not pertinent to noise, traffic or parking congestion, kinds of activity, or other conditions that conceivably *133 might alter the land-use-related "characteristics" or "environment" of the districts.

The rule-of-five might reflect an assumption that an unrelated group will be noiser, generative of more traffic and parking problems, or less stable than a related group of the same size, "But none of these observations reflects a universal truth. Family groups are mobile today, and not all family units are internally stable and well-disciplined. Family groups with two or more cars are not unfamiliar." (***City*** *of Des Plaines* v. *Trottner* (1966) 34 Ill.2d 432 [216 N.E.2d 116, 119]; see also *State* v. *Baker* (1979) 81 N.J. 99 [405 A.2d 368, 372].)

Is another assumption behind the rule, perhaps, that groups of unrelated persons hazard an immoral environment for families with children? That implied goal would not be legitimate. (See *Atkisson* v. *Kern County Housing Authority* (1976) 59 Cal. App.3d 89, 97 [130 Cal. Rptr. 375], holding invalid an irrebuttable presumption in a public housing regulation that unmarried cohabitation is immoral, irresponsible, or demoralizing to tenant relations; *U.S. Dept. of Agriculture* v. *Moreno* (1973) 413 U.S. 528, 534-535, fn. 7 [37 L.Ed.2d 782, 788, 93 S.Ct. 2821] ("hippies"); cf. Willemsen, *Justice Tobriner and the Tolerance of Evolving Lifestyles: Adapting the Law to Social Change* (1977) 29 Hastings L.J. 73.)

Finally, could not each of the **city's** stated goals be enhanced by means that are less restrictive of freedom than is the rule-of-five? To illustrate, "residential character" can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc.). Population density can be regulated by reference to floor space and facilities. Noise and morality can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements. *In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.* (Cf. *Shepard* v. *Woodland Tp. Committee & Planning Bd.* (1976) 71 N.J. 230 [364 A.2d 1005, 1015-1016].)

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Some courts, confronting restrictions similar to the rule-of-five here, have redefined "family" to specify a concept more
134 rationally and substantially related to the legitimate aim of maintaining a family style of *134 living. For example, in New Jersey a valid regulation of single-family dwellings would be "a reasonable number of persons who constitute a *bona fide* single housekeeping unit." (*Berger* v. *State* (1976) 71 N.J. 206 [364 A.2d 993, 1003]; see also *State* v. *Baker, supra,* 405 A.2d 368, 371-372: "The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimizes many uses which defeat that goal.... As long as a group bears the `generic character of a family unit as a relatively permanent household,' it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors. ***City** of White Plains* [v. *Ferraiolo* (1974) 34 N.Y.2d 300, 306 (357 N.Y.S.2d 449, 313 N.E.2d 756)]." (Cf. *Incorp. Village of Freeport* v. *Association, etc.* (1977) 94 Misc.2d 1048 [406 N.Y.S.2d 221, 223].[4])

We do not here address the question, How many people should be allowed to live in one house? (Cf. § 28.87.030(4b) of the ordinance, which concerns density and prohibits "increase in the intensity of ... [a] nonconforming use," including "[i]ncrease in the number of persons ... which has a detrimental effect on the surrounding community.") We merely hold invalid the distinction effected by the ordinance between (1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons.

CONDITIONAL USE PERMIT?

(2) **Santa Barbara** contends that appellants might preserve their life style by moving out of the one-family zone and seeking a permit in a two- or multiple-family zone for a boarding house ("[a] building where meals and/or lodging are provided for compensation for six (6) or more persons by pre-arrangement for definite periods" — § 28.04.100).

Boarding-house use is described as one of the uses that "possess characteristics of unique and special form ... [which]
135 make impractical their *135 being automatically included in classes of use as set forth in the various zones herein defined." (§ 28.94.001.) The permit may issue only if the boarding house "is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Comprehensive General Plan; and ... it is determined that such [use] will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood"; also, "the Planning Commission may impose other conditions and restrictions upon the proposed use consistent with the Comprehensive General Plan and may require bonding...." (*Id.*)

The **city's** contention that, pursuant to those and other rules, appellants should seek a permit lacks merit. Troubling questions arise with respect to (1) the justification for requiring that permit procedures be "exhausted" when the constitutional attack on the ordinance is meritorious (cf. *State of California* v. *Superior Court* (1974) 12 Cal.3d 237, 250-251 [115 Cal. Rptr. 497, 524 P.2d 1281]), (2) the reasonableness of requiring that appellants not reside in a one-family zone, (3) the great breadth of **city** officials' discretion to deny the permit, and (4) the rationality of presuming that Ms. **Adamson** in fact does operate a "boarding house."[5] (See too *People* v. *Perez* (1963) 214 Cal. App.2d Supp. 881, 885 [29 Cal. Rptr. 781] (re permit procedure: "To be valid it should be limited to those uses only for which it is difficult to specify adequate conditions in advance").) Those questions have not been addressed persuasively in the briefs submitted by the **city** attorney and amici who support his contentions here.

VARIANCE?

(3) Chapter 28.92 of the ordinance contains these sections: "28.92.010 Variances.

"When practical difficulties, unnecessary hardships or results inconsistent with the general purposes of this chapter
136 occur by reason of a *136 strict interpretation of any of the provisions of this chapter, either the Planning Commission or **City** Council may upon its own motion, or the Planning Commission upon the verified application of any property owner

or authorized agent shall, in specific cases, initiate proceedings for the granting of a variance from the provisions of this chapter under such conditions as may be deemed necessary to assure that the spirit and purposes of this chapter will be observed, public safety and welfare secured, and substantial justice done. All acts of the Planning Commission and **City** Council under the provisions of this section shall be construed as administrative acts performed for the purpose of assuring that the intent and purpose of this chapter shall apply in special cases, as provided in this section, and shall not be construed as amendments to the provisions of this chapter or map. Individual economic circumstances are not a proper consideration for the granting of a variance."

"28.92.013 Necessary Conditions.

"Before a variance may be granted all of the following shall be shown:

"1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity.

"2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity in which the property is located,

"3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by other property in the same zone and vicinity.

"4. That the granting of such variance will not adversely affect the Comprehensive General Plan."

The **city** attorney argues as follows (in his letter-brief dated Jan. 11, 1980): "Assuming that an Applicant can demonstrate that a group of more than five unrelated persons will not be adverse to the purposes of the Zoning Ordinance due to measures taken by the Applicant in establishing and regulating the group, the proposed use would have the extraordinary circumstances or conditions sufficient to allow more than five unrelated persons."

137 *137 Further (as to the requirement that **city** officials find the variance necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by other property in the same zone and vicinity), "[t]his finding can be made by a showing that owners of other homes and lots in the same zone and vicinity can use the home by [*sic*?] an unlimited number of related persons."

Finally, "[t]he second and fourth findings will depend upon the precise site selected, the information developed as part of the review process and whether conditions on the approval could be devised to remove any inconsistency with the findings. For example, an investigation may reveal that the area has adequate public parks, utilities, street capacity, or that a condition mitigating the injurious impact may be imposed. If water availability is a problem, it may be possible to require water conservation. If street capacity is a problem, a limit on average daily trips may be possible."

Those arguments are erratically remote from the significant facts of this case. Also, again, questions arise as to (1) the appropriateness of requiring here that administrative procedures be "exhausted," and (2) the breadth of **city** officials' discretion. (Cf. Judge Renfrew's comment in *Dahl* v. ***City*** *of Palo Alto* (N.D.Cal. 1974) 372 F. Supp. 647, 649: "It is highly improbable that a variance would, or legally could, be granted ..."; and see *Cow Hollow Improvement Club* v. *Board of Permit Appeals* (1966) 245 Cal. App.2d 160, 178 [53 Cal. Rptr. 610] (to allow an R-2 use in an R-1 zone is "tantamount to an amendment of the zoning regulations in the guise of granting a variance"); § 28.87.030(2) of the ordinance ("amendment after a recommendation... from the Planning Commission"); Cal. Zoning Practice (Cont.Ed.Bar Supp. 1978) § 7.54, p. 152 ("[c]ities may expect rigorous review of variances even if zoning is enacted under their charter powers"); *Moore* v. *East Cleveland* (1977) 431 U.S. 494, 512-513 [52 L.Ed.2d 531, 545-546, 97 S.Ct. 1932] (conc. opn. of Brennan, J.): "[T]he existence of the variance procedure serves to lessen neither the irrationality of the definition of `family' nor the extent of its intrusion into family life-style decisions.... We have now passed well beyond the day when illusory escape

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CONCLUSION

The order granting the preliminary injunction is reversed. The case is remanded for further proceedings consistent with this opinion.

138 *138 Bird, C.J., Tobriner, J., and Mosk, J., concurred.

MANUEL, J.

I dissent.

The majority opinion, casting the **City** of **Santa Barbara** — and presumably the at least 37 other cities which have similar zoning ordinances[1] — in the sinister role of antagonist to the "alternate family," radically distorts the meaning, purpose, and intention of the provisions we here consider. The **Santa Barbara** ordinances, it must be emphasized, *do not* preclude or impede the establishment of communal living arrangements in the single-family zones of the **city**. On the contrary they expressly permit such arrangements, simply imposing a numerical limitation thereon. Thus, the ordinances provide, a "family" for zoning purposes is either a traditional family (i.e., one composed of persons related by blood, marriage, or legal adoption), or what the majority terms an "alternate" family — one which, in the langauge of the ordinance, comprises "[a] group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit." (§ 28.04.230.)

139 *139 The majority, perceiving in these provisions some sort of dark animus against nontraditional living arrangements,[2] concludes that here at stake is "the right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption." (Majority opn., *ante*, at p. 130; fn. omitted.) As I read the ordinances, that right is expressly granted. The question before us, then, is whether those ordinances, insofar as they limit the *number* of unrelated persons who may live in a single dwelling unit, violate any cognizable constitutional rights.

It is clear that no rights guaranteed by the federal Constitution are offended. In the comparatively recent case of *Village of Belle Terre* v. *Boraas, supra* 416 U.S. 1, the United States Supreme Court addressed a challenge to the constitutional validity of an ordinance which, like that here before us, permitted unrelated persons to live together "as a single housekeeping unit" in a single-family zone but placed a numerical limit on such "alternate" arrangements. The ordinance was challenged on a number of constitutional grounds, including due process, the right to travel, and the rights of free association and privacy. The court held, however, that the case involved "no `fundamental' right guaranteed by the Constitution...." (*Id.*, at pp. 7-8 [39 L.Ed.2d at p. 803].) Therefore, the court concluded, the test to be applied in determining whether the legislative body had exceeded the scope of its constitutional power was that normally applied
140 to "economic and social legislation" of this kind — i.e., whether it bore a rational relationship to *140 a permissible state objective. (*Id.*, at p. 8 [39 L.Ed.2d at p. 803].) This, in the view of the high court, it did. Dismissing the contention that the numerical limit (*two* in that case) on "alternative" family groups was arbitrary,[3] it went on to say: "The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." (*Id.*, at p. 9 [39 L.Ed.2d at p. 804].)

The high court expanded on this theme in the case of *Moore* v. *East Cleveland* (1977) 431 U.S. 494 [52 L.Ed.2d 531, 97 S.Ct. 1932]. There the zoning ordinance in question defined "family" in restrictive terms, excluding not only "alternate" family arrangements but members of the extended natural family as well — in this case a woman's grandson. This, the court held, was impermissible. Justice Powell, speaking for a plurality of the court, distinguished *Belle Terre*, noting that whereas the ordinance in that case promoted family needs and values, the East Cleveland ordinance had "chosen to regulate the occupancy of its housing by slicing deeply into the family itself." (*Id.*, at p. 498 [52 L.Ed.2d at p. 537].) Thus, the court suggested, whereas the demands of due process do not trench upon the power of a **city** to limit and tailor the use of family zones by persons other than those having natural family ties to one another, the situation is quite different when the zoning power was utilized so as to impinge unreasonably on natural family relationships. "When a **city** undertakes such intrusive regulation of the family, neither *Belle Terre* nor *Euclid* [v. *Ambler Realty Co.* (1926) 272 U.S.

365 (71 L.Ed. 303, 47 S.Ct. 114, 54 A.L.R. 1016)] governs; the usual judicial deference to the legislature is inappropriate," (*Id.,* at p. 499 [52 L.Ed.2d at p. 537].)

Justice Brennan, joining in the plurality opinion but adding a word in concurrence, stated the distinction thus: "Indeed, *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974), the case primarily relied upon by [the **city**], actually supports the Court's decision. The Belle Terre ordinance barred only unrelated individuals from constituting a family in a single-family zone. The village took special care in its brief to emphasize that its ordinance did not in any manner inhibit the choice of
141 *related* individuals *141 to constitute a family, whether in the `nuclear' or `extended' form. This was because the village perceived that choice as one it was *constitutionally powerless to inhibit.*" (*Id.,* at p. 511 [52 L.Ed.2d at pp. 544-545], final emphasis added.) The implication of this statement, in light of the express holding in *Belle Terre,* is clear.

The distinction drawn by the *Belle Terre* and *Moore* cases has never been better expressed than it was in a case which, although antedating them by some four years, clearly anticipated their rationale. In *Palo Alto Tenants Union* v. *Morgan* (N.D.Cal. 1970) 321 F. Supp. 908, affd. (9th Cir.1973) 487 F.2d 883, the court confronted a challenge to a **city** zoning ordinance similar in all relevant respects to that here before us. It was urged that because an ordinance placing restrictions on the use of an R-1 zone by "traditional" families might be deemed "highly suspect," the ordinance there at bench — placing numerical limitations on "alternate" family arrangements in such a zone — should be viewed with the same suspicion. The court disagreed: "[T]here is a long recognized value in the traditional family relationship which does not attach to the `voluntary family'. The traditional family is an institution reinforced by biological and legal ties which are difficult, or impossible, to sunder. It plays a role in educating and nourishing the young which, far from being `voluntary', is often compulsory. Finally, it has been a means, for uncounted millenia, of satisfying the deepest emotional and physical needs of human beings. A zoning law which divided or totally excluded traditional families would indeed be `suspect'. [¶] The communal living groups represented by plaintiffs share few of the above characteristics. They are voluntary with fluctuating memberships who have no legal obligations of support or cohabitation. They are in no way subject to the State's vast body of domestic relations law. They do not have the biological links which characterize most families. Emotional ties between commune members may exist, but this is true of members of many groups. Plaintiffs are unquestionably sincere in seeking to devise and test new life-styles, but the communes they have formed are legally indistinguishable from such traditional living groups as religious communities and residence clubs. The right to form such groups may be constitutionally protected, but the right to insist that these groups live under the same roof, in any part of the **city** they choose, is not. To define `association' so broadly ... would be to dilute the effectiveness of that special branch of jurisprudence which our tradition has developed to protect the truly vital interests of the citizenry," (321 F. Supp. at pp. 911-912, fn. omitted.)

142 *142 The majority, faced with the authorities delineated above, quite understandably chooses to shift their focus away from the protections offered by the federal Constitution, Turning instead to the comprehensive terms of article I, section 1 of the state Constitution, and seizing upon certain expansive general passages to be found in *White* v. *Davis* (1975) 13 Cal.3d 757 [120 Cal. Rptr. 94, 533 P.2d 222], they quickly and without significant discussion conclude that the right of privacy set forth in that provision "comprehends the right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption." (Majority opn., *ante,* at p. 130, fn. omitted.) Having thus discovered the "fundamental" right they seek, they then proceed to set in motion the mighty engine of strict scrutiny. The ordinance, needless to say, does not survive its batterings.

In my view the majority have proceeded a bit too hastily. The necessary condition precedent to the application of strict scrutiny, and the search for a "compelling state interest" which it entails, is the determination that the right at stake is one lodged in the fabric of our Constitution. That determination, in the context of the instant case, requires that we find that right to be one comprehended within the guarantee of privacy set forth in article I, section 1. The relevant authorities, in my view, do not support the conclusion that "the right to live with whomever one wishes or, at least, to live in an alternative family with persons not related by blood, marriage, or adoption" is one enjoying that status.

The leading case of *White* v. *Davis, supra,* was one involving a police department's covert intelligence gathering activities, which activities were challenged as an infringement of the then newly adopted state privacy guarantee. There, noting that "the full contours of the new constitutional provision have as yet not even tentatively been sketched" (13

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Cal.3d at p. 773), we went on to provide such a sketch by indicating, through reference to election materials indicating the voters' intent, the broad area of concern within which the more detailed draftsmanship of judicial precedent was to occur. "Although the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief," we noted, *"the moving force behind the new constitutional provision was a more focussed privacy concern relating to the accelerating encroachment on personal freedom and security caused by increased surveillance*
143 *and data collection activity in contemporary society. The new provision's primary purpose is to afford* *143 *individuals some measure of protection against this most modern threat to personal privacy."* (*Id.,* at pp. 773-774; italics added, fn. omitted.) We also noted "the principal `mischiefs' at which the amendment is directed," They are: "(1) `government snooping' and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records." (*Id.,* at p. 775.)

In the recent case of *People* v. *Privitera* (1979) 23 Cal.3d 697 [153 Cal. Rptr. 431, 591 P.2d 919] it was contended that the state constitutional guarantee of privacy encompasses "a right to access to drugs of unproven efficacy," (*Id.,* at p. 709.) We held that it did not, pointing out that no such right was comprehended within the zone of privacy concern in which the amendment was designed to have effect. "In the absence of any evidence that the voters in amending the California Constitution to create a right of privacy intended to protect conduct of the sort engaged in by defendants, we have no hesitation in holding that section 1707.1 does not offend that constitutional provision." (*Id.,* at pp. 709-710.) (See also *People* v. *Davis* (1979) 92 Cal. App.3d 250, 260 [154 Cal. Rptr. 817].)

Similarly, I find no evidence of any kind that the voters, when they added the privacy provision found in article I, section 1, intended to establish a "right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption" (majority opn., *ante,* at p. 130) — such right to be preserved from all infringement except in those cases where a **city** can shoulder the unenviable burden of demonstrating some "compelling state interest" which justifies doing so. Accordingly, I conclude that the majority, in conferring "fundamental" constitutional status to the right it so describes, are in error. If the courts, in interpreting the privacy provision of our state Constitution, are to take upon themselves the function of determining when the wishes and desires of a particular group of people are to be accorded "fundamental" status — and thus invoke strict judicial scrutiny of legislation affecting such rights — the constitutional balance of our government will be radically dislocated. I do not believe that such a dislocation was intended by the voters of this state when they, out of a manifest concern for the excesses of governmental surveillance, adopted article I, section 1.

144 *144 The familiar dictum of Chief Justice Marshall (*McCulloch* v. *Maryland* (1819) 17 U.S. (4 Wheat.) 316, 406 [4 L.Ed. 579, 601]) bears renewed emphasis in cases of this kind, We deal here not with legislative wisdom but with constitutional principle. It may well be that an enlightened municipality, alert to the flow of social currents and the development of wholesome and valuable communal living arrangements outside the framework of the traditional family structure, might wish to tailor its zoning requirements in such a manner as to accommodate such arrangements on an essential parity with those of family groups. The **City** of **Santa Barbara**, to a significant extent, has done so, permitting such arrangements to coexist with family groups in its single-family zone, but placing a numerical limit on the size of such "alternate" groups — clearly with a view to imposing some limit on the size of living groups within the zone which are not subject to the normal biological and social limits of the natural family. It might well be that a legislator having the wisdom of Solomon would remove all such limits, That, however, is not the question before us, The question before us is whether the *failure* to remove them is *unconstitutional.* In my view, and as the cases which I have discussed above make clear, the answer to that question is decidedly no.

I would affirm the order.

Clark, J., and Richardson, J., concurred.

Respondent's petition for a rehearing was denied June 19, 1980. Clark J., Richardson, J., and Manuel, J., were of the opinion that the petition should be granted.

[1] The full text of article I, section 1 is as follows: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Regarding "happiness" see the concurring opinion of Field, J. in *Butchers' Union Co. v. Crescent City Co.* (1884) 111 U.S. 746, 754, 759 [28 L.Ed. 585, 589, 592, 4 S.Ct. 652] ("to secure to every one the right to pursue his happiness unrestrained, except by just, equal, and impartial laws"); cf. *Ex parte Drexel* (1905) 147 Cal. 763, 764 [82 P. 429]; *State v. Cromwell* (1943) 72 N.D. 565 [9 N.W.2d 914, 918].

[2] Cf. article 12 of the Universal Declaration of Human Rights: "No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 16(3) reads: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 17(1): "Everyone has the right to own property alone as well as in association with others."

See too article 29(2): "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

[3] Cf. Justice Marshall's dissenting opinion in *Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, 16 [39 L.Ed.2d 797, 808, 94 S.Ct. 1536]: "The choice of household companions — of whether a person's `intellectual and emotional needs' are best met by living with family, friends, professional associates, or others — involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution."

Even if Justice Douglas's majority opinion in *Belle Terre* still does declare federal law, the federal right of privacy in general appears to be narrower than what the voters approved in 1972 when they added "privacy" to the California Constitution. (See Cal. Const., art. I, § 24; *White v. Davis, supra*, 13 Cal.3d at pp. 774-775.)

Concerning uncertainty as to current federal law see Tribe, American Constitutional Law (1978) § 15-18, p. 974, § 15-21, p. 989; Carlin, *Moore v. City of East Cleveland: Freedom of Personal Choice for the Extended Family* (1978) 10 Sw.U.L.Rev. 651; Perry, *Modern Equal Protection: A Conceptualization and Appraisal* (1979) 79 Colum.L.Rev. 1023, 1073; Comment (1978) 91 Harv.L.Rev. 1427, 1576-1578.

See also Williams & Doughty, *Studies in Legal Realism: Mount Laurel, Belle Terre and Berman* (1975) 29 Rutgers L.Rev. 73, 74: "The New Jersey Supreme Court is beginning to deal realistically with major problems of the mid-1970's; the United States Supreme Court, rather surprisingly, is still merely repeating what were the fashionable liberal shibboleths of the mid-1930's."

For us the question is one of first impression. (Cf. Justice Tobriner's majority opinion in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604, fn. 22 [135 Cal. Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], which observes that "both the majority and the dissenting opinion in [*Village of Belle Terre* v.] *Boraas* support our conclusion" but does not examine rights of privacy or article I, section 1 of the California Constitution. (See too *Palo Alto Tenants Union v. Morgan* (N.D.Cal. 1970) 321 F. Supp. 908, 911.)

Concerning the possible breadth of the phrase "single family dwelling" see Justice Tobriner's opinion in *Brady v. Superior Court* (1962) 200 Cal. App.2d 69, 77-82 [19 Cal. Rptr. 242]. (Cf. conc. opn. of Stevens, J. in *Moore v. East Cleveland* (1977) 431 U.S. 494, 513, 516-519 [52 L.Ed.2d 531, 546, 547-550, 97 S.Ct. 1932]; and see Smith, *"Burning the House to Roast the Pig": Unrelated Individuals and Single Family Zoning's Blood Relation Criterion* (1972) 58 CornellL.Rev. 138, 161.)

[4] Owners with aims like those of Ms. **Adamson** are, of course, subject to many restrictions applicable to lessors generally. See, e.g., in the Fair Housing Law, Health and Safety Code section 35710, subdivision (d): "The term `discrimination' does not include refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or a boarder living within the household, *provided that no more than one roomer or boarder is to live within the household.*" (Italics added.)

[5] Cf. section 28.04.170, which states that a boarding house is not a "dwelling."

Even more meritless than the boarding-house proposal are (1) the proposal that Ms. **Adamson** seek a room-rental permit under section 28.94.030(1), and (2) the suggestion that her and her associates' relationship is akin to membership in a social club or fraternity. Cf. section 28.04.150 ("the purpose of [a club] ... is to render a service customarily rendered for members and their guests"); section 28.94.030(12) ("[n]ormal clubhouse facilities"); section 28.94.034 ("clubs providing primarily indoor recreation facilities rather than outdoor facilities are prohibited"); section 28.94.031(21) ("Fraternity and sorority houses in the R-2 Zones").

[1] Amicus curiae **City** of Los Angeles advises us in its brief that the following California cities have adopted a definition of "family" in their zoning ordinances which is identical to that adopted by **Santa Barbara**:

1. Auburn: Municipal Code section 9-4.137

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2. Azusa: Municipal Code section 19.04.300

3. Baldwin Park: Municipal Court section 9426(f) 1

4. Bell: Municipal Code section 9211(F)2

5. Burlingame: Municipal Code section 25.08.260

6. Camarillo: Municipal Code section 19.04.310

7. Carlsbad: Municipal Code section 21.04.145

8. Chula Vista: Municipal Code section 19.04.092

9. Colusa: Zoning Ordinance No. 191, section 4.25

10. Corte Madera: Municipal Code section 18.09.105

11. Crescent **City**: Zoning Ordinance section 30-700.36

12. Davis: Municipal Code section 24-1, article 4

13. Del Mar: Municipal Code, Chapter 30, section 30-32

14. Del Rey Oaks: Municipal Code section 11-217.1

15. Downey: Municipal Code section 9104.96

16. El Cajon: Municipal Code section 17.04.390

17. Hidden Hills: Municipal Code 47, section 1.17

18. Long Beach: Municipal Code section 9120.2

19. Los Angeles: Municipal Code, chapter 1, article 2, section 12.03

20. Manhattan Beach: Municipal Code, section 10-3.234

21. Modesto: Municipal Code section 10.2.502(d)1

22. Montebello: Municipal Code section 9202.6(F)1

23. Monterey: **City** Code section 2.08, appendix A

24. Monterey Park: Municipal Code section 21.04.275

25. Palos Verdes Estates: Municipal Code section 18-2.17

26. Richmond: Municipal Code section 15.04.040

27. Riverside: Municipal Code section 19.04.138

28. San Diego: Municipal Code section 101.0407 (B1-B5); section 101.0101.20

29. San Francisco: Municipal Code, part II, chapter II section 102.8

30. **Santa Barbara**: Municipal Code section 28.04.230(2)

31. **Santa** Cruz: Municipal Code section 24.10.354; section 24.16.300-341

32. Simi Valley: Zoning Ordinance No. 8170-25

33. Thousand Oaks: Municipal Code section 9-4.230

34. Torrance: Municipal Code section 91.2.24(b)

35. Vallejo: Municipal Code section 16.04.170

36. Vista: **City** Code, appendix A, Zoning Ordinance section 238

37. Whittier: Municipal Code section 9111.(f)2

[2] Indeed it is even suggested, albeit by rhetorical question, that one motive underlying **Santa Barbara's** zoning ordinances might have been a fear "that groups of unrelated persons [might] hazard an immoral environment for families with children." (Majority opn., *ante,* at p. 133.) I have difficulty understanding the relevance of such an observation in a case where the subject ordinances explicitly permit "groups of unrelated persons" to live together in a single-family zone. (See also *Village of Belle Terre* v. *Boraas* (1974) 416 U.S. 1, 8 [39 L.Ed.2d 797, 803-804, 94 S.Ct. 1536].)

[3] "It is said, however, that if two unmarried people can constitute a `family,' there is no reason why three or four may not. But every line drawn by a legislature leaves out some that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function." (*Village of Belle Terre* v. *Boraas, supra,* 416 U.S. 1, 8 [39 L.Ed.2d 797, 803-804], fn. omitted.)

J. Turner Law Group, APC

2563 Mast Way, Suite
Chula Vista, CA 91
Phone: (619) 684-4
Fax: (619) 872-0
Email: JTurner@JTurnerLawGroup.c

August 25, 2016

Mr. David Devries,
Dev. Services Director
City of Lemon Grove
Building/Dev. Services Dept.
(Sent via Email)

Re: City Redevelopment, LLC
Prop. Address: 2545 Crestline Drive

Dear Mr. Devries:

The undersigned has been retained by City Redevelopment, LLC to review the recent history of my client's building permit application to modify the single-family house that it owns on the above-described property. My understanding is that my client is seeking, among other things, to *reduce* the number of rooms in the house so that it contains 14 bedrooms, which my client intends to use for an Independent Living home. The focus of this letter is the legal position that your department is taking in denying a permit because you believe that the intended use constitutes a "boarding house", which is limited in size by Section 17.080.30. Your department's decision to call an Independent Living home a "boarding house", unfortunately, neither squares with the real facts of what an Independent Living home is nor is in step with applicable state and federal law.

As you may know, an Independent Living home is designed primarily for persons who have physical and/or mental disabilities that make it difficult, if not impossible, for them to function and live on their own. Instead, for a low cost, they reside in an Independent Living home, sharing chores, working on making meals together, and doing social activities together (watching TV, board games, etc.). In short, unlike a "board house", an Independent Living home is a residence for residents who live and function together as a single household. They live this way not only because it is economical, but, more importantly, because they benefit from sharing their daily lives with the other residents as a family. The functional nature of an Independent Living home, including the one that my client intends to have at the subject property, falls well within the definition of a "family" under Section 17.080.30 of the Municipal Code. I am unaware of any provision of the Municipal Code or other regulations that prohibits a family-occupied single-family residence from being *reduced* in size, or from having more than 5 bedrooms.

I note that the stated purpose of the City's zoning ordinance is, among other things, "[t]o protect the established character of and to enhance the social and economic stability of residential, commercial, industrial and other areas within the city, and to assure the orderly and beneficial development thereof as parts of a well-coordinated community". LMC Section

17.040.30(c). Since there is no restriction on the bedrooms of a residential dwelling that is used by a family, it is clear that the City believed that families of all sizes, residing within the City, are part of the "social and economic stability of residential…areas." The City now wishes to restrict the size of a dwelling used by a functional family to reside in an Independent Living home; it is far from clear how this will protect or enhance the stability of residential neighborhoods.

Instead, this restriction that your department is now placing on my client's use of its house is the kind that will constitute an unjustified invasion of privacy, which a city cannot do under the established rules of California case law, including the state Supreme Court's ruling in *City of Santa Barbara vs. Adamson*, (1980) 27 Cal.3d 123. A city government does not have the legal authority to choose what kinds of individuals constitute a family and what kinds do not, if a group of individuals form a real and functional family household.

Indeed, as Mr. Tim Hutchinson of City Redevelopment has probably already tried to explain to you, federal law directly prohibits housing discrimination against physically or mentally disabled residents in the creation or enforcement of city zoning ordinances. 42 U.S. Code Section Section 3604(f). This is especially true where a city's zoning and building code enforcement actions contribute to "mak[ing] unavailable or deny[ing]" housing to those persons. *See*, *Pacific Shores Property, LLC v. City of Newport Beach*, 730 F.3d 1142, 1156-1157 (9th. Cir. 2013). Independent Living homes are "dwellings" under 42 U.S.C. Section 3602(b), and therefore the FHAA prohibits discriminatory actions that adversely affect the availability of such group homes. Indeed, as one federal court concluded, "[i]n case after case, courts have concluded that the FHAA has been violated where municipalities have attempted to prevent or restrict persons with disabilities from living in the single family-zoned homes of their choice." *Dr. Gertrude A. Barber Center v. Peters Township*, 273 F. Supp. 2d 643, 654 (W.D. Pa. 2003); see also, *Gamble v. City of Escondido*, 104 F.3d 300, 304-05 (9th Cir. 1997). Importantly, each of these theories may apply even to a facially neutral law like some some zoning ordinances. *Ibid.*, 104 F.3d at 306. Moreover, even if a disabled adult may have other opportunities to live in the County or region, the FHAA is specific to the "dwelling" of choice by a disabled adult. The language of the statute suggests as much by requiring an "equal opportunity to use and enjoy a dwelling," rather than an equal opportunity to live in a city or region. 42 U.S.C. Section 3604(f)(3)(B). *See Erdman v. City of Ft. Atkinson*, 84 F.3d 960, 963 (7th Cir. 1996).

My client understands that there are a number of legitimate issues to address in order to obtain its permit, and my client wants to continue to work and cooperate with the City to resolve all these issues. However, the rigid interpretation of Title 17 to prohibit my client from *reducing* the size of its single-family house and using it for an Independent Living home is incorrect and not legally defensible. For these reasons, I am requesting that your and your department withdraw your objections to the size (in terms of rooms and bedrooms) for the subject property and no longer use that as a basis for denying my client's permit application.

If you insist on your department's current legal position and this continues through an appeals process, then my client and I will continue to demonstrate the legal and factual basis for my client's permit application. Moreover, if the City remains unmoved from its position that an Independent Living home somehow constitutes a "boarding house", then my client will be forced

to pursue legal action against the City in court—something that my client does not want to do, if a reasonable and sensible resolution can be achieved.

Please direct communications regarding this "boarding house" decision to the undersigned on behalf of City Redevelopment, LLC. In the meantime, Mr. Hutchinson will continue to work with your staff to resolve as many other issues that may remain in the way of issuing the requested permit.

Very truly yours,

Jason E. Turner, Esq.

JET/es

Cc: Mr. T. Hutchinson

Law Office of Chance Hawkins
3245 University Avenue, #1527, San Diego, CA 92104

August 31, 2016 - Via Email & U.S. Mail

Jason Turner, Esq.
J. Turner Law Group APC
2563 Mast Way Ste B
Chula Vista, CA 91914-4539
email: jturner@jturnerlawgroup.com

Re: **City Redevelopment LLC Appeal to Lemon Grove City Council**
Appeal No. **AA1-600-0002**
Property: **2545 Crestline Drive, Lemon Grove, CA**
Hearing Date: **September 6, 2016 at 6 p.m.**

Dear Mr. Turner:

This letter responds to your letter dated August 25, 2016 on behalf of the City of Lemon Grove.

I understand based on your letter that you represent the appellant and property owner City Redevelopment LLC and will advocate on their basis at the City Council public hearing.

Staff has not been provided with any written validation that Mr. Tim Hutchinson[1] has the legal ability to represent the property owner City Redevelopment LLC. Please provide David Devries with LLC authorization that validates Mr. Hutchinson's ability to represent the property owner.

Otherwise, staff will raise this issue at the hearing which could have bearing on the legality on your client's appeal.

Prior to your letter, I was retained by the City of Lemon Grove to advise and assist city staff with regard to your client's appeal.

Because you have raised legal arguments regarding the permit denial, I felt it appropriate that I respond to your letter directly on behalf of the City of Lemon Grove.

Your August 25, 2016 letter and this response letter and its attachment will be included in the hearing packet that will be provided to you in advance of the hearing.

General Overview Of Matter

First, I believe your letter inaccurately represents this matter and I would like to re-focus you on the underlying facts here.

The facts are clear that your client purchased the property which was listed as a 2300 square-foot, 5-bedroom house, and illegally constructed an additional 17 bedrooms (9 of which are at

[1] Also, please confirm the spelling of Mr. Hutchinson's name, he has provided differently-spelled last names to staff.

issue by way of this appeal) and began renting to individual tenants without ever applying for building permits with the City of Lemon Grove.

As you are aware, building permits are necessary to ensure that construction conforms with the California Building and Fire Codes and is safe for its residents and the neighborhood.

The property currently has electrical wiring that has not been inspected and could pose a potential health and safety threat to the tenants.

In addition, the City's Fire Department has inspected the property and has notified your client that because there are no fire sprinklers in many of the individual rooms and the adjoining areas that there is a current threat to the health and safety of the tenants in the structure. This is just one of the violations cited in the Record of Inspection dated August 15, 2016.

In sum, your client's illegal construction has posed a health and safety threat to the tenants and the neighborhood and he undertook all these installations without ever contacting the City of Lemon Grove.

Moreover, your client has irresponsibly leased his property when it is clear based on the Fire Department's inspection it is not currently safe to do so.

Your Assertion That The City's Qualification Of Your Client's Business As A Boarding House Is Not In Conformance With California Law

This assertion is not correct. I direct you to the California Attorney General's 2003 Opinion Letter that states: "We conclude that a city may prohibit the operation of boarding house businesses in a low density residential zone in order the preserve the residential character of the neighborhood." 86 Ops. Cal. Atty. Gen. 30 (2003).

I have attached a copy of the Opinion Letter for your reference. The Opinion goes on to state: "Without question, operating a boarding house for 20 to 30 boarders would undermine a neighborhood's residential character." See Opinion at Page 4, Paragraph 2.

Therefore Lemon Grove does have the legal ability to deny your client's permit on the boarding house basis.

The fact that you are contending that this property operates as an "independent living home" does not alter the ability for Lemon Grove to regulate on the basis the property being operated as a boarding house.

Moreover, based on this Opinion cities have increasingly defined a "household" or a "single housekeeping unit" to have the characteristics of: 1) a joint lease signed by all tenants; and 2) new residents selected by existing residents, not a manager or landlord.

As you are aware, the tenants on-site do not sign a joint lease or select new residents which does not indicate that they are acting as a single household.

Your Assertion Of Discrimination Against Tenants

You contend that the City's denial of your client's building permit constitutes housing discrimination.

As stated in the City's June 23, 2016 denial letter, ". . . the subject property is not compatible with the General Plan Land Use Designation or Zoning District and is recognized as a boardinghouse. . ."

This action, and the appropriate provisions of the City of Lemon Grove, is not directed to nor intended to regulate the ability of any person, disabled or not, from living at 2545 Crestline Drive.

The denial is instead based on whether a 22-bedroom property in a 2300 square foot house is a permitted use within the Residential Low/Medium Zoning District in addition to it being operated as a prohibited boarding house.

Therefore, the caselaw you have cited at Page 2, Paragraph 3 in your letter is inapplicable to the current situation.

For example, the action at issue in *Santa Barbara v. Adamson* 27 Cal. 3d 123 (CA Sp. Ct. 1980) was a city ordinance that attempted to define what constitutes a "family" and limit the number of related persons that live in a household. Such is not the case here.

Further, you cite *Gamble v. City of Escondido*, 104 F. 3d 300 (9th Cir. 1997), in your letter which I feel is particularly relevant to this matter.

In *Gamble*, in response to Escondido's rejection of his building permit, the property owner made the same assertions of housing discrimination against the physically disabled that you lodge here. Escondido's denial was based on land use regulations and held that the proposed building was too large for the lot and did not conform in size and bulk with the neighborhood structures and the character of the neighborhood.

The Court held that Escondido's denial did not discriminate against the physically disabled because there was no proof demonstrating that the City's permit practices have a significantly adverse or disproportionate impact on the physically disabled or elderly.

Similarly, there is no evidence here that Lemon Grove's permit denial is discriminatory either.

Denying a permit based on atypical building size and bulk for a single-family residence does not violate the Fair Housing Act. *See Escondido* at 304; *see also United States v. Village of Palatine,* 845 F. Supp. 540 (N.D. Ill. 1993).

Attachment H

Conclusion

Therefore, on behalf of the City of Lemon Grove, we reject your request for City staff to "withdraw your objections to the size (in terms of the rooms and bedrooms) for the subject property and no longer use that as a basis for denying my client's permit application" and the City will proceed with the public hearing appeal that your client has requested.

And please instruct your client to cease communications with staff as he has retained you to represent his interests and you have instructed staff to direct all further communications to your attention.

Thank you for your attention to this matter.

Very truly yours,

Chance Hawkins, Esq.

Attachment of 86 Ops. Cal. Atty. Gen. 30 (2003).

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 01-402
of	:	March 19, 2003
BILL LOCKYER Attorney General	:	
ANTHONY S. Da VIGO Deputy Attorney General	:	

THE HONORABLE SHARON D. STUART, CITY PROSECUTING ATTORNEY, CITY OF LOMPOC, has requested an opinion on the following question:

May a city prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental manager is in residence?

CONCLUSION

A city may prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence, in order to preserve the residential character of the neighborhood.

ANALYSIS

A city proposes to enact an ordinance prohibiting the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone. A boarding or rooming house business would be defined under the ordinance "as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence."[1] We are asked whether the ordinance would be valid. We conclude that a city may prohibit the operation of boarding house businesses in a low density residential zone in order to preserve the residential character of the neighborhood.

It is now well settled that a city has broad authority to adopt zoning ordinances to protect the public health and general welfare of its residents. (See Cal. Const., art. XI, § 7; Gov. Code, §§ 65800-65912; *Euclid v. Ambler Co.* (1926) 272 U.S. 365, 386-395; *Miller v. Board of Public Works* (1925) 195 Cal. 477, 484-488.) Municipalities may establish strictly private residential districts as part of a general comprehensive zoning plan. (*Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 337-338; *Fourcade v. City and County of San Francisco* (1925) 196 Cal. 655, 662; *Sutter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1131.)[2] "[M]aintenance of the character of residential neighborhoods is

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[1] A rooming house typically does not provide meals or cooking facilities. For our purposes, however, a rooming house business would be subject to the same analysis as a boarding house business and will thus be included in the term "boarding house" throughout this opinion.

[2] We may assume for purposes of this opinion that the proposed ordinance would be consistent with the city's general plan. (Gov. Code, § 65860; cf. *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1589; see also 81 Ops.Cal.Atty.Gen. 57, 57-61 (1998).) We may also assume that the ordinance would be consistent with state law prohibiting certain group homes from being considered "boarding houses." (See Health & Saf. Code, §§ 1500-1567.9; *Hall v. Butte Home Health, Inc.* (1997) 60 Cal.App.4th 308, 318-322;

a proper purpose of zoning." (*Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at p. 1590.)

More specifically, the courts of this state have stated that the operation of boarding house businesses may be excluded from a residential zone. (*City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133 ["To illustrate, 'residential character' can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc.")]; *City of Chula Vista v. Pagard* (1981) 115 Cal.App.3d 785, 792; see also *Seaton v. Clifford* (1972) 24 Cal.App.3d 46, 51 ["the maintenance of a commercial 'boarding house,' . . . which in essence is providing 'residence' to paying customers, is not synonymous with 'residential purposes' as that latter phrase is commonly interpreted in reference to property use"].) With respect to zoning matters, "[t]he term 'residential' is normally used in contradistinction to 'commercial' or 'business.' " (*Sechrist v. Municipal Court* (1976) 64 Cal.App.3d 737, 746.)

"There is no question but that municipalities are entitled to confine commercial activities to certain districts [citations], and that they may further limit activities within those districts by requiring use permits." (*Sutter v. City of Lafayette, supra,* 57 Cal.App.4th at p. 1131.) "Many zoning ordinances place limits on the property owner's right to make profitable use of some segments of his property." (*Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 498.) Here, the proposed ordinance would allow property owners to rent to boarders under one or two separate rental agreements. The owners would not be denied all commercial use of their properties. (See *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at pp. 1592-1593.)[3]

In short, preserving the residential character of a neighborhood is a legitimate government purpose that may be reasonably achieved by prohibiting commercial enterprises such as operating a boarding house business. (See *Euclid v. Ambler Co., supra,* 272 U.S. at pp. 394-395; *City of Santa Barbara v. Adamson, supra,* 27 Cal.3d at p. 133; *Miller v. Board of Public Works, supra,* 195 Cal. at p. 493; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 687; *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at pp. 1590-1592; *City of Chula Vista v. Pagard, supra,* 115 Cal.App.3d at pp. 792, 799-800.)

City of Los Angeles v. Department of Health (1976) 63 Cal.App.3d 473, 477-481; 76 Ops.Cal.Atty.Gen. 173, 175 (1993).)

[3] Of course, the proposed ordinance would apply only to the city's low density residential (R-1) zone and not to multiple dwelling zones or other zoning districts of the city.

The proposed ordinance would not raise constitutional issues of the right of privacy or right of association since it would allow any owner of property to rent to any member of the public and any member of the public to apply for lodging. The proposed ordinance would be directed at a commercial use of property that is inconsistent with the residential character of the neighborhood and which is unrelated to the identity of the users. The courts have approved a distinction drawn that is based upon the commercial use of property by owners in a restricted residential zone. (See *City of Santa Barbara v. Adamson, supra,* 27 Cal.3d at pp. 129-134; *Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 460-464; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 686-687; *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at pp. 1595-1598; *City of Chula Vista v. Pagard, supra,* 115 Cal.App.3d at pp. 791-793, 798.)

We reject the suggestion that the relatively few number of boarders prohibited under the proposed ordinance would prevent the ordinance from being upheld by a court. In *City of Santa Barbara v. Adamson, supra,* 27 Cal.3d 123, the Supreme Court indicated that operating boarding house businesses could be prohibited to preserve the residential character of a neighborhood without specifying that the businesses had to be of a particular size. (*Id.* at p. 133.) Of course, the greater the number of boarders who would occupy a single family dwelling, the more likely the residential character of the neighborhood would be threatened. (See *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at p. 1591.) Without question, operating a boarding house for 20 or 30 boarders would undermine a neighborhood's residential character. Here, the proposed ordinance would prohibit a boarding house business operated for only three boarders. And, as previously observed, the proposed ordinance would allow commercial use of a property if only one or two boarders were renting rooms from the owner. What is the standard of review for evaluating such a legislative determination as to the allowable size of a boarding house business in a restricted residential zone?

" ' "[A]s is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." ' [Citation.]" (*Hall v. Butte Home Health, Inc., supra,* 60 Cal.App.4th at p. 322.) "[C]ourts ordinarily do not consider the motives behind legislation, including local legislation [citations], nor do they second-guess the wisdom of the legislation [citations]." (*Sutter v. City of Lafayette, supra,* 57 Cal.App.4th at p. 1128.) "In enacting zoning ordinances, the municipality performs a legislative function, and every intendment is in favor of the validity of such ordinances. [Citations.]" (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460.) The ordinance will be upheld so long as the issue is " 'at least debatable.' " (*Minnesota v. Clover Leaf Creamery Co.* (1981) 449 U.S. 456, 464; see *Sutter v. City of Lafayette, supra,* 57 Cal.App.4th at p. 1133; *Ewing v. City of Carmel-by-the-Sea,*

supra, 234 Cal.App.3d at pp. 1587-1588; *Cotati Alliance for Better Housing v. City of Cotati* (1983) 148 Cal.App.3d 280, 291-292.) In *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d 1579, the court summarized the applicable principles with respect to drawing lines of distinction in adopting zoning regulations:

> ". . . Line drawing is the essence of zoning. Sometimes the line is pencil-point thin—allowing, for example, plots of one-third acre but not one-fourth; buildings of three floors but not four; beauty shops but not beauty schools. In *Euclid*, the Supreme Court recognized that 'in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.' (*Euclid v. Ambler Co., supra,* 272 U.S. at p. 389.) Nonetheless, the line must be drawn, and the legislature must do it. Absent an arbitrary or unreasonable delineation, it is not the prerogative of the courts to second-guess the legislative decision. [Citations.]" (*Id.* at p. 1593.)

It is "at least debatable" that prohibiting boarding house businesses operated for as few as three boarders in a low density residential zone is a reasonable exercise of legislative power. Given that boarding house businesses may be prohibited in low density residential zones, we cannot say, in the abstract, that the proposed ordinance would be "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." (*Euclid v. Ambler Co., supra,* 272 U.S. at p. 395; cf. *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at pp. 1591-1592.) The line as to the number of allowable boarders must be drawn somewhere, and here the city council may prohibit the operation of boarding house businesses with three or more boarders in order to preserve the residential character of the neighborhood.

We conclude that a city may prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental agent is in residence, in order to preserve the residential character of the neighborhood.

*****

Attachment I

David De Vries
Development Services Department
3232 Main Street
Lemon Grove, CA 91945-1705
619-825-3812

Dear Mr. De Vries,

I'm writing to you in regards to a very serious, on-going issues going on at residence: 2545 Crestline Dr. Lemon Grove, CA 91945.

Residents from this home have been coming onto my property and have been a nuisance to myself, my wife, my mother, and my daughter of 1 year. I would like to share some incidents that have taken place at my home and our neighborhood from those residents.

In the month of June 2016, a gentleman around his early 60's started running up and down the street of Crestline Dr. He started kicking vehicles that were parked on the street, some even on driveways, to include my vehicle. The reason as to why he decided to do such act, we're not sure of .

Second incident, took place within the same month of June, 2016. I'd say it was between the hours of 9 p.m. and 11p.m., when another gentleman came up to my home and started to bang ferociously on my front door. My wife and I were startled as to whom could possibly be at our door late night, let alone bang on our door very obnoxiously. He then went on to our windows, with the same ferocious force as with the door. I immediately had my wife get our daughter and hide in our bedroom as I feared this man was going to break in through the window and possibly cause us harm.

Third incident, involved a woman around her mid 60's. One day prior, the woman had been sitting at my front door step. She seemed to be minding her own business, therefore we left her alone. The following afternoon, the same woman was knocking on our door, per my mother and wife, rather loudly, and my mother who was visiting from Guatemala, opened the door. This woman knocked my mother to the ground and made her way into our home. My wife called the police immediately; I had to leave work early to see what was going on. Paramedics had to examine my mother, being she is 71 years of age.

An ongoing issue is from a gentleman who purposely takes his canine to my lawn and has it relieve itself. I do understand that animals go on and about and relieve themselves where they find fit; however this gentleman takes his canine across the street to my front lawn for it may do it's business. The canine's fecal matter remains in my front lawn being that the gentleman is in a wheelchair. I have stood outside plenty of times to witness this, and he continues to do so.

As a family man, I do not feel my family is safe in my home. I am not present during the day being that I work and my wife and child are the ones alone. With these incidents, I do feel their safety is at risk. I'm not sure of the status of the residents, but I have been able to obtain

Attachment I

information of persons that may give you more information about the home and it's purpose:

Ph: Ford Focus, Gray License Plate No:

Ph: Volvo, Gray License Plate No.

I thank you in advance for taking your time to read my letter for concern.

Kind Regards,

Fernando Mendez

HEARTLAND FIRE & RESCUE

SERVING THE CITIES OF EL CAJON, LA MESA AND LEMON GROVE

Record of Inspection

August 15, 2016

2545 Crestline Dr.
Lemon Grove, CA. 91945
(858) 635-5549

Notice of Fire & Safety Hazards: You are hereby notified that an inspection of your premises on August 11, 2016 has disclosed the following life and fire safety hazards and/or violations: **Compliance is required immediately.**

2545 Crestline Dr. – Lemon Grove, CA. 91945

1. The gauge on the Fire Sprinkler System is currently reading zero (0) and the entire system appears to be turned off and non-functioning. The Fire Sprinkler System is required for this building and shall be maintained operational at all times.

   A. Provide required service for the system and update Automatic Fire Sprinkler System Riser Annual and 5 year certification tags

   B. There are currently no fire sprinklers in many of the tenant rooms and adjoining areas within the unpermitted construction. Provide appropriate sprinkler coverage and spacing throughout the building and replace or repair all required signage for fire sprinkler system utilizing a California licensed California Licensed C16 contractor. Plans and permits shall be submitted to the City of Lemon Grove Building Dept. prior to restoring the system to service, or any alterations or additions to the existing system. CFC 901.6, 901.7.6, CFC 105.7, 105.7.1

2. There are currently fire sprinkler heads with non-permitted coverings placed over them. At no time shall fire sprinkler heads be covered, obstructed, or tampered with in any way. CFC 901.8

3. There appears to be significant non-permitted construction on the premises (bedroom additions and garage conversion). Contact the City of Lemon Grove Building Department to submit required plans and permits in order to comply with all applicable codes and standards. Further requirements may follow. CFC 105.7

4. There are multiple electrical panels that appear to have been installed and or altered without permit (front northwest corner exterior, east hallway interior) that are currently presenting a fire and electrocution hazard. All electrical panels on the interior and exterior portions of the building shall be serviced and rendered safe and compliant by a California Licensed Electrical Contractor. Additionally, replace or repair any and all missing, broken, and/or dislodged electrical outlet and junction boxes as required throughout the building. Submit appropriate plans and permits for any and all electrical work to be done on the premises through the City of Lemon Grove Building Department. CFC 605.1, 605.6

Attachment J

5. Smoke detectors on site are non-operational and located in areas that are not compliant. Provide working California State Fire Marshal approved smoke detectors and install according to State Law and manufacturer's specifications. CFC 907.2.11.2

6. There are currently no fire extinguishers present on site. Provide appropriately rated fire extinguishers at approved locations in order to satisfy requirements based on the buildings occupancy classification. CFC 906

7. "No Smoking" signs shall be posted where smoking and improper disposal of burning materials is creating a fire hazard. Tenants are being allowed to smoke in areas where approved disposal receptacles are not provided and are leaving burning materials in dry weeds, under beds, on furniture, and other areas containing combustible materials. This is a fire hazard due to the improper disposal of burning materials. CFC 310.7

8. There is a medical oxygen tank being stored adjacent to an open flame (gas) water heater. This presents an immediate fire hazard. Remove oxygen tank to safe location and maintain 3 feet of clearance around water heater at all times. CFC 305.1

9. The windows in each bedroom are required to be Emergency Escape and Rescue openings and the currently installed windows do not meet these requirements. Consult with the City of Lemon Grove Building Dept. in order to comply with all requirements. CFC 1029, 1029.5.1

10. The mechanical ventilation for the clothes dryer is not approved. Consult with the City of Lemon Grove Building Dept. in order to comply with all requirements. CFC 305.1

11. Pine needles are accumulating in excess on the roof of the structure and are creating a potential fire hazard. Periodically remove pine needles from roof to ensure that any potential for a fire hazard is abated. CFC 304.1, 304.1.1, 304.1.2, CCR Title 19 Div. 1 SS. 3.07 (b).

12. There are currently 22 tenant rooms on site. This does not comply with the assigned occupancy classification for the building or the City of Lemon Grove Building Department records. Consult with the City of Lemon Grove Building Dept. in order to comply with all requirements. A design professional such as an architect must submit construction documents and a detailed occupancy classification analysis in order to determine the appropriate occupancy classification. Additional requirements are anticipated once the occupancy classification has been determined.

13. There are no panic hardware devices located on exit doors. These are required based on the occupancy of this building. Additionally, thumb-turn dead-bolt locks are present on doors leading to the exterior of the building which are not permitted at any time based on the occupancy classification. Consult with the City of Lemon Grove Building Dept. in order to comply with all requirements. CFC 10

HEARTLAND FIRE & RESCUE

SERVING THE CITIES OF EL CAJON, LA MESA AND LEMON GROVE

Please contact me with any questions or concerns you may have. **All violations must be corrected immediately.** A re-inspection will occur on or after September 11, 2016 to verify compliance.

Thank you,

Shaun Richardson
Heartland Fire & Rescue
Fire Inspector I
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Attachment K

2545 Crestline Drive Vicinity Map